Supreme Court of the United States

OCTOBER TERM, 1968

No. 297

IMMIGRATION AND NATURALIZATION SERVICE,
Petitioner,

—v.—

VELJKO STANISIC

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

DOCKET ENTRIES
(including administrative proceedings)

1965	
January 7:	Filed alien's petition for injunctive relief (Civil No. 65-10)
January 7:	Entered District Director's initial order denying alien's application for parole
January 11:	Filed alien's amended and supplemental petition for injunctive relief
January 13:	Filed I.N.S.'s motion for summary judgment
January 18:	Filed district court's order staying proceedings and referring matter back to immigration authorities to hold hearing
January 25:	Entered District Director's order denying alien's application for parole (following hearing)
January 27:	Filed alien's second amended and supplemental complaint
January 27:	Filed alien's motion for review of District Director's order of January 25 denying parole
April 27:	Filed I.N.S.'s answer to alien's second amended and supplemental complaint
April 27:	Filed I.N.S.'s motion for summary judgment
July 9:	Filed opinion of district court (East, D.J.) granting I.N.S.'s motion for summary judgment and dismissing complaint
July 20:	Filed order of district court (East, D.J.) granting I.N.S.'s motion for summary judgment and dismissing complaint
1966	
June 21:	Entered District Director's order directing alien to appear for deportation from the United States on June 24 (following alien's failure to obtain relief by private bill)
June 22:	Submitted alien's renewed petition to District Director for parole

DOCKET ENTRIES
(including administrative proceedings)

1966	
June 23:	Entered District Director's order denying alien's renewed petition for parole
June 23:	Filed alien's complaint seeking review of District Director's June 23 order denying parole (Civil No. 66-333)
June 23:	Filed alien's motion to restrain District Director from deporting him
June 23:	Filed district court's order to District Director to show cause why restraining order should not issue
June 23:	Filed I.N.S.'s answer to alien's complaint
June 24:	Filed findings and judgment of district court (Kilkenny, D.J.) denying alien's motion to restrain District Director from deporting him
June 24:	Filed alien's notice of appeal to court of appeals
July 29:	Filed alien's motion for order directing District Director to surrender to clerk of district court for inclusion in record on appeal entire administrative file which was submitted to Judge East for inspection
July 29:	Filed order of district court granting alien's July 29 motion
1968	
February 9:	Filed alien's motion in court of appeals for order requiring I.N.S. to ascertain from Yugoslav Government what charges, if any, will be made against him if he is returned to Yugoslavia and maximum punishment that will be inflicted, and to request guaranties that he will not be subjected to persecution
April 17:	Filed order of court of appeals denying alien's February 9 motion
April 17:	Filed opinion and judgment of court of appeals

[Filed January 7, 1965]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 65-10

VELKYO [*sic*] STANISIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED A. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

PETITION FOR INJUNCTIVE RELIEF

Comes now petitioner and alleges:

I.

Petitioner is an alien and a citizen of Yugoslavia and until recently a crewman aboard the SS SUMADIJA, a Yugoslavia flag vessel presently docked at Coos Bay, Oregon.

II.

Respondent ALFRED A. URBANO is the District Director of the United States Immigration and Naturalization Service with his office at Portland, Oregon.

III.

That on January 4, 1965, petitioner left the aforesaid vessel and entered the United States.

IV.

That petitioner seeks political asylum in the United States of America and desires in the alternative not to be sent or returned to Yugoslavia or any other communist dominated country for the reason that he and his family have been persecuted by the Communists in Yugoslavia

because they are anti-communist and petitioner should he return to Yugoslavia or a Communist country would be in danger of being persecuted, physically abused or killed.

V.

That petitioner has applied for the aforesaid relief with the Immigration and Naturalization Service and has retained Gerald H. Robinson as his attorney.

VI.

That the respondents have refused to permit petitioner to consult with his attorney before taking statements, have refused to afford petitioner an opportunity to be heard on his claim to stay within the United States and have advised petitioner's attorney that they intend to remove petitioner from Portland to the aforesaid vessel forthwith and prevent him from asserting his claim to remain in the United States.

VII.

That if petitioner is returned to said vessel he will be subject to the control and discipline of the captain and will be in immediately danger of life and limb.

WHEREFORE, your petitioner prays for an order of this Court:

1. Restraining respondents from removing petitioner from the City of Portland or otherwise deporting or excluding him from the United States without an opportunity to be heard on his claim to remain in this country; and

2. To confer with counsel; and

3. For such other and further relief as may be appropriate in the premises.

/s/ Gerald H. Robinson
GERALD H. ROBINSON
Attorney for Petitioner

FILE: A15 620 991

IN RE: VELJKO STANISIC

APPLICATION: Parole because of fear of physical persecution; 8 CFR 253.1(e)

DISCUSSION: The Applicant last entered the United States as a crewman on the M/V SUMADIJA at Coos Bay, Oregon, on December 21, 1964. He was admitted as a crewman with a conditional landing permit under the provisions of Section 101(a)(15)(D). The Applicant left his vessel in Coos Bay, Oregon, and communicated with a relative in Eugene, Oregon. He was transported to that city by this relative on or about January 5, 1965. He was then brought to the Portland, Oregon office on January 6, 1965, where he was informally interviewed. He stated that he would not return to his vessel under any conditions and that he feared persecution if returned to his ship. No substantial evidence was given at this time as to any acts or reasons for persecution. Since he expressly indicated that he would not return to his vessel, his conditional landing permit was revoked in conformity with Section 252(b) of the Immigration and Nationality Act.

On January 7, 1965, an attempt was made to give the Applicant an opportunity to state his views under oath and present evidence under 8 CFR 253.1(e) concerning his allegations that he would be persecuted. He was represented by Gerald H. Robinson as counsel. Applicant refused to make any statement under oath at this time upon advice of counsel.

The provisions of Section 252(b) of the Immigration and Nationality Act provide that the conditional landing permit of a crewman who has left his vessel and does not intend to depart with the vessel may be revoked, the crewman taken into custody and the Master or commanding officer of the vessel on which he arrived be required to receive and detain him on board such vessel, and be deported from the United States.

Inasmuch as the Applicant was afforded an opportunity to furnish this Service with information and any evidence he may have to substantiate his application under

8 CFR 253.1(e), and has refused to do so, I find no evidence in this matter that would substantiate his allegations of persecution. His application for parole will be denied, and he will be returned to his vessel pursuant to the provisions of Section 252(b) of the Immigration and Nationality Act.

ORDER: It is Ordered that the application be denied.

/s/ Alfred J. Urbano
ALFRED J. URBANO
District Director
U. S. Immigration
& Naturalization Service
Portland, Oregon

DATE: January 7, 1965.

[Filed January 11, 1965]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 65-10

VELJKO STANISIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

AMENDED AND SUPPLEMENTAL PETITION
FOR INJUNCTIVE RELIEF

Comes now the petitioner and alleges:

I.

Petitioner is an alien and a citizen of Yugoslavia and until recently, a crewman aboard the SS Sumadija, a

Yugoslavia flag vessel presently docked at Coos Bay, Oregon.

II.

Respondent, Alfred J. Urbano, is the District Director of the United States Immigration and Naturalization Service with his office at Portland, Oregon.

III.

That on January 4, 1965, petitioner left the aforesaid vessel and entered the United States.

IV.

That petitioner seeks political asylum in the United States of America and desires in the alternative not to be sent or returned to Yugoslavia or any other communist dominated country for the reason that he and his family have been persecuted by the Communists in Yugoslavia because they are anti-communist and petitioner should he return to Yugoslavia or a Communist country would be in danger of being persecuted, physically abused or killed.

V.

That petitioner has applied for the aforesaid relief with the Immigration and Naturalization Service and has retained Gerald H. Robinson as his attorney.

VI.

That the respondents have refused to permit petitioner to consult with his attorney before taking statements, have refused to afford petitioner an opportunity to be heard on his claim to stay within the United States and have advised petitioner's attorney that they intend to remove petitioner from Portland to the aforesaid vessel forthwith and prevent him from asserting his claim to remain in the United States.

VII.

That since the filing of the original petition herein, the respondents have filed a purported order, a copy of which is attached hereto and marked Exhibit "A", denying petitioner's application for relief as above stated; that said order was on its face entered without a hearing, without an opportunity for petitioner to have effective use of counsel who was summoned to the purported interrogation referred to in the order on 15 minutes notice and without an opportunity to consult with his client prior thereto; that the foregoing conduct of the respondents is in violation of the petitioner's right to due process of the law under the Constitution of the United States and is in violation of the statutes of the United States appertaining, especially, Title 8 USCA Sec. 1362 and Title 8 USCA Sec. 1252.

VIII.

That the respondent, Alfred J. Urbano, is not capable of making a fair or impartial decision as to petitioner's claims and has evidenced his bias against petitioner by his summary denial of petitioner's claims at the time petitioner made his application as set forth herein and, prior to any knowledge on the part of the said Alfred Urbano, of the facts which are the basis of petitioner's claims.

IX.

That if petitioner is returned to said vessel or to Yugoslavia or to any other Communist dominated country, he will be subject to the control and discipline of the captain and will be in immediate danger of life and limb.

WHEREFORE, your petitioner prays for an Order of this Court:

1. Restraining respondents from removing petitioner from the City of Portland or otherwise deporting or excluding him from the United States without an opportunity for a hearing under Title 8 USCA Sec. 1252 upon his claim to remain in this Country; and to confer with counsel; and

2. For such other and further relief as may be appropriate in the premises.

/s/ Gerald H. Robinson
GERALD H. ROBINSON
810 Standard Plaza
Portland, Oregon
Attorney for Petitioner

[Exhibit "A" is the order of the District Director which appears at pp. 5-6, *supra.*]

[Certificate of Service omitted in printing]

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14 January 1965
Reporter J. M.
Deputy D. E. R.

..... Solomon, CJ. × East, J. ..... Kilkenny, J.

Civil No. 65-10

VELJKO STANISIC

vs.

U. S. IMMIGRATION & NATURALIZATION SERVICE, ET AL.

Pltfs. Attys. Gerald H. Robinson
Defts. Attys. Don Sullivan

* * * * *

Record of hrg. on respondents Motion for Summary Judgment.

Order staying proceedings and referring matter back to the immigration authorities to hold a hearing to determine whether the Petitioner should be paroled to the U. S. A.

Order staying any deportation order if issued.

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
Portland, Oregon

FILE: A15 620 991

IN RE: VELJKO STANISIC

APPLICATION: Parole because of fear of physical persecution; 8 CFR 253.1(e)

DISCUSSION: After inquiry conducted January 7, 1965 pursuant to Section 253.1(e), Title 8, Code of Federal Regulations, an order was entered denying the above application for parole. The applicant then petitioned for injunctive relief in the United States District Court, Portland, Oregon. The Court, considering the petition, instructed that the matter be returned to this Service for further inquiry under the above regulation to permit the applicant to present evidence in support of his claim that he would be subjected to physical persecution if he should be returned to Yugoslavia. On January 18, 1965 the order of January 7, 1965 was withdrawn and it was ordered that the inquiry be reopened in accordance with the directive of the Court. The inquiry was reopened January 19, 1965.

The applicant is a 29 year-old native and citizen of Yugoslavia. He has never married. He is employed as a radio operator on the M/V Sumadija, a Yugoslav vessel. He last entered the United States on that vessel December 23, 1964 at Coos Bay, Oregon, and was given permission to visit ashore. On January 4, 1965 he and another crewman, Veselin Vucinic, left the vessel and on January 6th presented themselves at the Immigration Office in Portland. They stated they wished to remain in the United States as they would be subjected to persecution if they should be returned to their vessel or to Yugoslavia. Their landing permits were revoked under Section 252(b) of the Immigration and Nationality Act.

The applicant's parents are natives and citizens of Yugoslavia. His father died in Yugoslavia June 23, 1964. His mother lives in Titograd, Yugoslavia. He has five brothers and three sisters. They are also natives, citizens, and residents of Yugoslavia. He has a cousin in the United States.

The applicant stated he is of the Orthodox religion. He attended elementary school in Pelev Brijeg for four years from 1945 to 1948; junior high school from 1948 to 1950; and high school from 1950 to 1955 in Kotor. He also attended an architect school for seven months in Zagreb. From 1955 to 1956 the applicant worked for about a year in a post-office in Kotor and as a teller in a bank for about six months in Rijeka in 1957. From March, 1958 to March, 1959 he attended the Yugoslav Officers' Reserve School for six months and was a Lieutenant in the Army for six months in the field. After leaving the Army he attended the Merchant Marine Telegraph School for one year, finishing in 1960. He thereafter served as an assistant radio operator and radio operator on about six different Yugoslav merchant vessels, beginning in 1961 to the present time.

The applicant testified he has been opposed to Communism ever since about six years of age. He stated he left the M/V Sumadija because of the Communist faction aboard, to which he is opposed. He stated the Communists on the ship gave him a rough time and accused him of being sympathetic to non-Communist countries. He admitted they could not do too much to him because he held the essential position of radio operator, but that he would be ridiculed on arrival at his home port because of his sympathies with the western powers.

The applicant stated that if returned to his ship now he would be persecuted. This persecution would consist of verbal abuse and ridicule, not only because of his anti-Communist feelings, but also because he deserted the ship. He stated that the verbal persecution

would be so severe that he could not stand it and would jump into the sea.

The applicant stated he has never been physically mistreated on his ship. He stated the captain, who is also anti-Communist, "used to read me off." Even though the captain is also anti-Communist, the applicant did not get along well with him. He stated the captain is under the domination of the Communists on the ship and is forced to adhere to their principles. He stated he ate the same food as the other crewmen, and that he was paid the same wage as the other crew-members, commensurate with his position as radio officer.

The applicant stated that if he should be returned to Yugoslavia now he would be tried as an escapee from his ship, and that he does not know if he would be killed or sent to prison for life. He stated he could not stand the humility and remarks which would be directed at him, and that he would have no alternative but to kill himself. Upon further questioning he stated he would be tried as a deserter and also because he is anti-Communist. He stated he has not been tried before for his anti-Communist feelings, although he has been back to Yugoslavia a number of times in his calling as a seaman, the last time being in July, 1964. At that time he was only accused by Communists in his town as being pro-Western.

The applicant stated that if he goes back to Yugoslavia he would have no life there, and that he would be killed or put in jail. He stated that if he got out of jail he would be unable to get a job. He stated that in Yugoslavia a crewman who deserts his ship is persecuted, whether he is Communist or anti-Communist. He stated that the Communists think he is a spy for the American government because he is the radio officer on the ship. He stated that in considering his case the authorities would take into account the fact that he is anti-Communist, that he jumped ship, that he believes in God, and that he is a spy for the United States government.

According to the applicant's testimony the only time he was arrested by authorities in Yugoslavia was in 1957, when he and a friend tried to escape to Trieste. They were picked up by fishermen and turned over to the police, who released them after two days. According to the applicant he was told then that if he ever tried it again he would be sentenced to life imprisonment.

The applicant's late father reportedly worked for about 30 years as a city clerk in Pelev Brijeg. He also assisted a priest in a church. He was against the Communists, and before Tito took over in Yugoslavia he got along alright with the authorities. When Tito took over in 1945 the applicant's father lost both of his jobs. Because he was anti-Communist he was not given the pension to which he was entitled. He assisted the Chetniks by furnishing them food and livestock for a few months, and then went home to farm his small piece of land and take care of his family. The applicant stated his father's life was twice threatened by the Communists after the war, he was beaten and his home was ransacked. On one occasion he was only spared by the intervention of an old friend who worked for the government.

The applicant stated that more than 30 of his uncles and cousins were killed by the Communists after the war, the last being in about 1950. He is somewhat vague in his knowledge of when they were killed, and as to the part his father played in helping the Chetniks, apparently basing his testimony on what his father told him before his death.

The applicant testified his brother, Branko, has been a teacher and school superintendent since at least 1948, and is now superintendent of a seaman's school for merchant marines in Kotor. His brother, Blazo, is a farmer. A brother, Vasilija, is a lieutenant in the Yugoslavia army, where he has served for five years. A brother, Bosko, works as an assistant mechanic on a ship. A brother, Nikola, attends a technical school in Titograd. His brother-in-law has worked as a police officer for five or six years.

Although the applicant testified he is on good terms with the members of his family and visits with them on his trips to Yugoslavia, he is not sure whether they are Communists or anti-Communists, or whether they are persecuted. He stated Branko and Vasilija are possibly Communists, else they could not hold jobs of trust. Although the applicant has much knowledge of the political beliefs of many Yugoslavians, he is not certain about the members of his own family.

The applicant stated he does not belong to any organizations, although dues are withheld from his wages for the Syndicata Pomoraca, a seaman's union. He stated he had no difficulty obtaining his last job on a ship, the M/V Sumadija. He took the job voluntarily. It has never been any problem obtaining work on the ships. He holds a seaman's book, issued to him by the authorities in Yugoslavia, and bearing a number of endorsements by such authorities showing his signing on and off of Yugoslavian vessels. He stated he is not required to present his travel documents to gain entry to his country. It is only necessary in order to change from ship to ship. According to his testimony his right to leave or return to Yugoslavia as a crewman has never been questioned. Some times, if his vessel was to be in port only a day or two, or if he had work to do on the ship, he was not permitted to go ashore. Otherwise he was given permission by the captain to leave the ship.

The applicant stated that 80 per cent of the Orthodox churches in Yugoslavia have been closed by the authorities, but that most of the Catholic churches are open. When his father died he wrote to the ship company and advised that he wished to return home to visit his father's grave. His ship returned to Yugoslavia shortly thereafter, in July, 1964, and the applicant was discharged. He remained in Yugoslavia 25 days and visited his father's grave during this time. While there he stayed with his mother, his brother, and cousins, and was not bothered by the officials. The applicant stated he assists his brothers in supporting his mother.

He sends her money every month from his earnings as a crewman. This money is sent through the shipping company, and has always been received by his mother.

The applicant stated he and his friend, Vucinic, recently assisted another crewman from their ship to desert in Vancouver, Canada, by lending him money. Although he was not physically abused by ship's personnel for this action, he states he was closely questioned by the Communist leader on the ship, and was told he would be given a hearing about the matter on return to Yugoslavia.

Two witnesses testified on behalf of the applicant. The first witness asked that his testimony not be divulged outside the hearing to any unauthorized persons because of fear of reprisals on his family in Yugoslavia. He testified he is a 69 year-old native of Yugoslavia naturalized in the United States in 1939. He first came to the United States in 1914, was in Yugoslavia from 1920 to 1923, again from 1929 to 1930, and last from 1958 to October 24, 1963. He reportedly went to Yugoslavia in 1958 to see about an apartment house which the government had taken from his parents in 1945. While there he dealt in the buying and selling of automobiles, was convicted of dealing in the black market, and was sentenced to serve 14 months. The original sentence was two and one-half years, but was reduced to 14 months by the Supreme Court. He was released after serving only 10 months.

The witness testified that after he arrived in Yugoslavia he was called before the secret police and questioned about remarks he had made in favor of the United States. He was admonished that he had better be careful or he might get into trouble. He stated he knew of the Stanisic and Vucinic families in Yugoslavia, they having been well thought of during the old regime. He stated he heard the Communists had taken over the land of the Vucinic's, and he knows both families were generally thought to be anti-Communist. He stated he had heard that the Communists killed many people, and that he knows the Communists are against

people of the Orthodox faith and that the churches are empty. He stated there are more Catholic churches there than Orthodox because the Pope has more power, and between Communist and Catholic it makes no difference.

According to the witness his principal knowledge of the atrocities perpetrated by the Communists was gained while he was in prison. He explained that he was convicted on some black market charge, resulting from business he did buying cars in Germany and selling them in Yugoslavia. He stated three different companies asked him to buy cars, which he arranged to do and had them sent from Germany to Yugoslavia. He paid the tax on the three cars, and realized a profit of $5,000. He stated Tito then forbade such activity saying it was dealing in the black market. His residence was searched and $10,000 was found stored in suitcases. This money was taken by the government and the witness was fined an additional $5,000, which he did not pay. He received the sentence mentioned before.

The witness does not say that he was physically mistreated while in jail, but that the political prisoners there were tortured, beaten, and killed. He personally saw only one prisoner beaten, but the stories about the other atrocities were given to him by other persons allegedly imprisoned for political reasons. The witness stated all the prisoners, both political and criminal, were housed together, and the only way he could tell a political from a criminal prisoner was by what the prisoner told him. He admitted that a prisoner might have told him he was in for political reasons, yet might have actually been a criminal.

The witness stated that if the applicant is sent to Yugoslavia he will be badly punished, and it would be better for him to die first. He stated he will suffer broken arms and ribs and other tortures. He knows this, he states, because they do this to everyone. He assumes from this that a deserting crewman will be imprisoned as a matter of course, and will be beaten. He knows of no seaman to whom this has happened.

The witness married in 1922 and his wife and two married daughters live in Yugoslavia. They have never come to the United States. His wife never wanted to come here, as she preferred to stay in Yugoslavia to take care of their parents. The witness asked her to come in 1929 but she refused. Her parents died before the war but she still did not come to the United States, and after the war the Communists would not let her come. In fact, she never tried. The witness stated his wife is getting along all right, and the Communists are not bothering her.

One of the witness' daughters has a husband who is against Communism, and he hasn't worked for a year and a half. The witness assists them by sending money, which the Communists permit to pass to him. The husband of the other daughter is a retired colonel. He draws a pension, and according to the witness is a Communist. The witness testified his own father died of cancer in 1957. He was in a government hospital for some time, having priority because he had been in the war. The witness thinks he was well taken care of.

Rade Dzankic was presented as a witness. He is a 35 year-old native and citizen of Yugoslavia, and comes from the same vicinity where the applicant lived. He was paroled into the United States September 27, 1963 as a refugee.

The witness testified he lived in Yugoslavia until 1949. He belonged to a youth movement known as the "R.O. Youths", which was opposed to the Communists. He tried to escape and was captured in Albania, where he was imprisoned from 1949 to 1956. He escaped from Albania, returned to Yugoslavia, was caught and imprisoned for three years. He stated that while in jail in Yugoslavia he suffered many tortures, such as being beaten, placed in solitary confinement, and being starved. He said the other political prisoners were treated the same way.

The witness testified the Stanisic and Vucinic families are known to be anti-Communist and were for the Chet-

niks in the old government. The Chetniks were persecuted and many were killed by the Communists after the war. He stated his brother was killed on April 24, 1944, and when his mother visited the brother two of her teeth were knocked out. After being released from prison in 1959 the witness served two years in the army. He was released and escaped to Italy, where he lived until coming to the United States in 1963.

It is the opinion of this witness that if the applicant is returned to Yugoslavia he will be tortured and will suffer punishment much more severe than that which would be inflicted on a Communist in the same circumstances. He stated the Orthodox churches have all been destroyed in Yugoslavia, and that there are only a few monasteries, used for tourist purposes.

This witness' father and mother, two brothers and a sister, live in Yugoslavia. He stated his parents live very poorly on their small farm. He testified quite openly about his experiences and family in Yugoslavia, without apparent fear that his family might suffer as a result of his testimony.

The witness bases his opinion of the fate which awaits the applicant in Yugoslavia on what a Yugoslav deserting crewman told him in Italy in 1963 as to what he knows about treatment accorded deserters. He has no other knowledge of punishment given deserters from ships, and knows of no crewman who has been punished in Yugoslavia.

Generally speaking, physical persecution, the likelihood of which would authorize postponement of deportation, means confinement, torture, or death inflicted on account of race, religion or political viewpoint. It does not encompass imprisonment for jumping ship.[1] The applicant has made no claim of persecution because of his race. The only claim he has made relating to his religion is that most of the churches of his faith have been closed in Yugoslavia, and he feels he is not free to attend church at will.

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[1] *Blazina* v. *Bouchard*, 286 F.2d 507 (C.A. 3, 2/2/61).

The applicant does not claim that he has actively engaged in any political activity. In essence, his claim is that he has been opposed to Communism since a youth, and his anti-Communist beliefs are known among his fellow crewmembers and among his acquaintances and fellow townspeople in Yugoslavia. According to the record, even though the applicant's opposition to Communism is known, he has been able to avoid joining the Communist Party, without apparent detriment to his career as a crewman. He admittedly has not so much as joined the Communistic seaman's union, although dues are taken from his wages. The fact that he has not been punished for these beliefs and failure to join the Party, and the fact that he has been able to hold his position of radio officer on Yugoslavian ships almost without interruption since early in 1961 do not support his position that he would be persecuted on return to Yugoslavia.

It has been judicially determined that economic proscription so severe as to deprive a person of all means of earning a livelihood may amount to physical persecution.[2] However, the applicant does not base his claim to physical persecution on utilitarian sanctions. By his own testimony he has been regularly employed in an important position on Yugoslavian vessels regularly since 1961, and has been earning enough money to send assistance to his mother each month. If he has difficulty thereafter in obtaining work on ships it will be as a result of his having deserted his vessel, and not because of his political beliefs. This aspect of the case, then, speaks for itself and requires no further comment.

It has further been ruled that imprisonment for illegally deserting a vessel is a criminal sanction reconcilable with generally accepted concepts of justice, and does not constitute physical persecution.[3] The court

[2] *Dunat* v. *Hurney*, 297 F.2d 744 (C.A. 3, 1/24/62).

[3] *Diminich* v. *Esperdy*, 299 F.2d 244 (C.A. 2, 12/29/61); cert. den. 4/9/62—82 S. Ct. 875.

later modified this ruling, however, to the extent of holding that an alien threatened with long years of imprisonment, perhaps even a life sentence, for attempting to escape a Communist dictatorship would be entitled to asylum on the ground of physical persecution.[4] And still subsequently it decided that possible incarceration for one or two years resulting from illegally deserting a ship is not physical persecution.[5]

The applicant contends he will now be in greater disfavor with the Communists in Yugoslavia because he jumped ship. Actually he has not presented any evidence that he has in the past been in their disfavor. The worst he suffered before was detention for two days when he was stopped from fleeing from Yugoslavia. For that he was only questioned and released with an admonishment. As stated before he comes and goes at will as a seaman. For four years he has held the sensitive position of radio officer on Yugoslavian ships. He was educated by the government there through high school, and then in the merchant marine school. He has presented nothing to show that his mother and brothers and sisters now living in Yugoslavia have been in the past or are now being physically persecuted. The threats of bodily harm and attempts at physical violence which respondent says were directed against his father, uncles and cousins occurred for the most part during and shortly after the war, and not since 1950.

Probably the applicant will be questioned by Yugoslav authorities if he is returned to his homeland. Possibly he will be confined during such examination. But such questioning and confinement will be in connection with his desertion from a Yugoslavian vessel contrary to the marine statutes of that nation, and not because of his opposition to Communism. Desertion of his ship by a Yugoslav crewman is, theoretically, a disciplinary of-

[4] *Sovich* v. *Esperdy*, 31 L.W. 2585, 13 Ad. L. 2d 619 (C.A. 2, 5/15/63).

[5] *Zupicich* v. *Esperdy*, C.A. 2, 6/28/63.

fense punished pursuant to Article 48 of the "Decree Concerning the Crews of the Merchant Marine of September 17, 1949." The penalties for such desertion thereunder are reprimand, fine, and loss of earned wages, but ordinarily not jail.[6] Contrary to the applicant's expectations, I see little likelihood that he will suffer the dire punishment he recounts. There are no circumstances in this record which indicate otherwise.

Apparently the applicant and the witness, Rade Dzankich, while testifying had in mind primarily the harsh conditions which existed in their homeland immediately following World War II. Counsel asks that we take judicial notice of physical persecution as it existed, or now exists, in Yugoslavia. As noted hereafter we take official notice of the conditions in that country. We take official notice of the fact that these conditions probably did exist during the War and possibly for several years thereafter to a lesser degree. At the same time, however, we must also take official notice that political restrictive measures against individuals have relaxed considerably in Yugoslavia in recent years.[7]

We also take official notice that on March 13, 1962 the Yugoslavian government granted amnesty to most of its political opponents, including members of units that fought against Marshal Tito's Partisans during World War II. A government bill embodying the terms of the amnesty was approved unanimously by parliament without debate. It was estimated the measure would affect about 150,000 persons outside Yugoslavia and would free nearly 100 prisoners.

This record contains nothing to distinguish the applicant from the numerous cases of Yugoslav nationals who have attempted strenuously to remain in this country rather than return to Yugoslavia. It has been held that only where the likelihood of physical persecution presently exists in a particular situation is with-

[6] Matter of *Banjeglav*, Int. Dec. No. 1298.

[7] Matter of *Vardjan*, Int. Dec. No. 1347.

holding of deportation warranted.[7] As in the cited case we do not find such likelihood here.

Even though it is established and we recognize that there has been persecution in Yugoslavia in the past, this record is replete with evidence, much of it supplied by the applicant and his witnesses, that in many instances the authorities in Yugoslavia in recent years have been considerate and understanding in their dealings with their nationals, whether their beliefs be for or against the Communists. From the testimony of one witness this fair treatment was even accorded a United States citizen who was found to have violated the laws of that nation.

It has been judicially held that where there is no evidence that the claimant was persecuted when he lived in Yugoslavia the denial of relief was proper.[8] The facts of this record, applied in the light of the foregoing precedents, do not establish that the applicant has shown that he would be physically persecuted if he were to return to Yugoslavia. The applicant's belief that he would be imprisoned for many years, physically mistreated, or killed on return to Yugoslavia, is mere conjecture on his part. He was not persecuted during all the years that he lived in Yugoslavia or served aboard its ships. His mother and eight brothers and sisters live in Yugoslavia and no showing has been made that they have been subjected to physical persecution either. Again these matters speak for themselves.

ORDER: It is ordered that the application be denied.

/s/ Alfred J. Urbano
ALFRED J. URBANO
District Director

Date: January 25, 1965

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[7] Matter of *Vardjan*, Int. Dec. No. 1347.

[8] *Guzabat* v. *Esperdy* (S.D., N.Y., 61 Civ. 4429, 4/16/62).

[Filed January 27, 1965]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 65-10

VELJKO STANISIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

SECOND AMENDED AND SUPPLEMENTAL COMPLAINT

Comes now the petitioner and alleges:

I.

Petitioner is an alien and a citizen of Yugoslavia and until recently, a crewman aboard the SS Sumadija, a Yugoslavia flag vessel presently docked at Coos Bay, Oregon.

II.

Respondent, Alfred J. Urbano, is the District Director of the United States Immigration and Naturalization Service with his office at Portland, Oregon.

III.

That on January 4, 1965, petitioner left the aforesaid vessel and entered the United States.

IV.

That petitioner seeks political asylum in the United States of America and desires in the alternative not to be sent or returned to Yugoslavia or any other communist dominated country for the reason that he and his family have been persecuted by the Communists in Yugo-

slavia because they are anti-communist and petitioner should he return to Yugoslavia or a Communist country would be in danger of being persecuted, physically abused or killed.

V.

That petitioner has applied to the Immigration and Naturalization Service for a hearing upon the above claim and to this Honorable Court, and on the 18th day of January, 1965, by Order of the Honorable William East, United States District Judge, the matter was referred to the District Director for the presentation of evidence in accordance with 8 CFR 253.1(e).

VI.

That on January 19, 1965, pursuant to the aforesaid Order of the Court, the petitioner presented evidence to the Deputy District Director of Immigration and Naturalization at the Court House in Portland, Oregon and on the 26th day of January, 1965, the District Director of Immigration and Naturalization issued his ruling denying the petitioner's application for parole.

VII.

That the foregoing action of the District Director of Immigration and Naturalization was arbitrary and capricious and not supported by the evidence; that the said District Director of Immigration and Naturalization was biased against petitioner and was incapable of making a fair or impartial decision as to petitioner's claim.

VIII.

That your petitioner if returned to the vessel or to Yugoslavia or to any other Communist dominated country, he will be subject to physical persecution and in immediate danger of life and limb.

WHEREFORE, your petitioner prays for an Order of this Court:

1. Reversing the Order of January 25, 1965 of Alfred J. Urbano, District Director of the Immigration and Naturalization Service, and entering a Judgment and Order restraining the respondents from removing petitioner from the United States of America, or otherwise deporting or excluding him pursuant to 8 USCA Sec. 1253 (h); and

2. For such other and further relief as may be appropriate in the premises.

/s/ Gerald H. Robinson
GERALD H. ROBINSON
810 Standard Plaza
Portland, Oregon
Attorney for Petitioner

[Certificate of Service omitted in printing]

[Filed July 9, 1965]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 65-9

VESELIN VUCINIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

Civil No. 65-10

VELJKO STANISIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

OPINION

EAST, District Judge.

The above-named petitioners in the above consolidated matters are nationals of Yugoslavia, and each was a member of the crew of the M/V SUNADIJA [*sic*], of Yugoslavian registry, on January 4, 1965. Vucinic was an ordinary seaman and Stanisic was the radio operator.

During the night of January 4, 1965, while the M/V SUNADIJA was in the Port of Coos Bay, Oregon, the petitioners, each holding an entry permit as visiting seamen issued by the respondent Naturalization Service, deserted the ship, with the intention of remaining in the United States.

The respondent Alfred J. Urbano (Urbano), District Director for Oregon, when advised of the desertion, re-

voked the petitioners' entry permits. 8 U.S.C. § 1282(b) (1964 ed.).

On January 7, 1965, the petitioners sought of Urbano parole to the United States pursuant to the provisions of 8 U.S.C. § 1253(h) (1964 ed.) on the grounds that each of them was nonsympathetic to the averred Communist Government of Yugoslavia, and should they return to Yugoslavia they would be subjected to physical persecution for their political beliefs.

Urbano on January 7, 1965 caused the petitioners to be interrogated by personnel of the respondents' Portland office, and, based upon the record of such interrogation, found in the exercise of his discretion that petitioners' grounds for parole were wanting, denied their applications for parole, and ordered them excluded and returned to their ship.

The petitioners then instituted these proceedings, seeking injunctive relief from Urbano's orders. Petitioners claimed they had sufficient entry status to entitle them to a hearing before a special inquiry officer, prescribed for regular deportation proceedings under 8 U.S.C. 1252 (b) (1964 ed.). An administrative grant of deportation suspension "has historically been exercised as an integral part of the deportation proceedings before the special inquiry officer." *Glavic* v. *Beechie*, 225 F.Supp. 24, 26 (S.D. Tex. 1963), *aff'd.* 340 F.2d 91 (5th Cir. 1964). This claim of a right to a special inquiry officer hearing was, and is, untenable. The sections of the Immigration and Nationality Act dealing solely with alien crewmen, 8 U.S.C. §§ 1281-87 (1964 ed.), permit revocation of a crewman's conditional entry permit when, as was true here, the crewman "does not intend to depart on the vessel . . . which brought him . . .". 8 U.S.C. § 1282(b) (1964 ed.). And that same section further provides that "[N]othing in this section shall be construed to require the procedure prescribed in section 252 [8 U.S.C. § 1252(b) (1964 ed.), discussed, *supra*,] in cases falling within the provisions of this subsection." And see *Glavic* v. *Beechie*, *supra*. However, pursuant to authority granted by 8 U.S.C. § 1182(d)(5) (1964 ed.), the Attorney General has promulgated a regulation authorizing a District Director to

parole into the United States an alien crewman "who alleges that he cannot return to a Communist, Communist-dominated, or Communist-occupied country because of fear of persecution in that country on account of . . . political opinion . . ." 8 C.F.R. § 253.1(e) (1965). This regulation, relating expressly and solely to alien crewmen, made it unnecessary for this Court to decide the issue of entry status that has, in some cases, proved crucial in denying certain noncrewmen aliens the opportunity to establish, during regular deportation proceedings, the likelihood of persecution for race, religion or certain opinions if deportation occurred. See, *e.g.*, *Leng Ma* v. *Barber*, 357 U.S. 185 (1958).

On January 18, 1965, this Court stayed any contemplated exclusion order of the petitioners and referred their causes back to Urbano for the purpose of holding an evidentiary hearing to receive such testimony and evidence the petitioners desired to produce in support of their claim of physical persecution if returned to Yugoslavia. On January 19 and 20, 1965, Urbano caused the evidentiary hearing to be held by William L. Pattillo (Pattillo), Deputy District Director for Oregon, and petitioners called and interrogated all witnesses and produced all evidence of their choice.

Based upon the record of such hearing, Urbano, on January 25, 1965, in the exercise of his discretion, found that:

> (a) The petitioners, upon their return to Yugoslavia, would probably be subjected to penalties provided by law for their voluntary desertion of their ship, and
>
> (b) The petitioners had failed to prove their claim of physical persecution for their political beliefs upon their return to Yugoslavia,

and accordingly denied the petitions for parole.

On January 27, 1965, the petitioners moved this Court to review Urbano's decision and order of January 25, 1965, on the grounds that the same was arbitrary, capricious, was not supported by the evidence, and that Urbano was biased against the petitioners.

The petitioners noticed the discovery depositions of Urbano and Pattillo, and this Court denied Urbano's and Pattillo's request for relief from such discovery. These depositions were taken on May 18, 1965, and have been filed herein, as well as the complete administrative files of the respondent Service's Oregon office relating to the petitioners, for review by this Court *in camera*. Also, the record of the evidentiary hearing is now before this Court.

The petitioners and Urbano have each filed motions for summary judgment in their respective favor upon the record before this Court.

At the threshold, the Court faces a challenge to its jurisdiction to review the proceedings before Urbano. To support its challenge, the Government cites 8 U.S.C. § 1105a(a) (1964 ed.), which limits review of certain determinations to appropriate Courts of Appeals. However, the indicated statute applies solely to judicial review "of all *final orders of deportation* heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings *under section 1252(b) of this title* or comparable provisions of any prior Act, . . ." [Emphasis supplied.] By its very terms the provision is inapplicable to this case, even as interpreted in *Foti* v. *Immigration Service*, 375 U.S. 217 (1963) to include administrative denial of suspension of deportation sought pursuant to 8 U.S.C. § 1254(a)(1) (1964 ed.). The instant proceedings occurred under the provisions of the Immigration and Nationality Act relating solely to alien crewmen, 8 U.S.C. §§ 1281-87 (1964 ed.), and 8 C.F.R. § 253.1(e) (1963), *supra*, permitting parole for alien crewmen. Those statutes and that regulation are completely silent regarding judicial review of proceedings before a District Director relating to alien crewmen.

In *Glavic* v. *Beechie*, *supra*, the Court, facing a problem virtually identical to the one here, granted review, without apparent issue, concern, or discussion, under the judicial review section of the Administrative Procedure Act, 5 U.S.C. § 1009 (1964 ed.). While I question *Glavic's* failure to examine the assumption of jurisdiction more thoroughly, I conclude its result sound in that the issues presented there and in these proceedings deal with

fundamental Constitutional questions of due process. Were the petitioners in custody, they could raise these Constitutional issues in a habeas corpus proceedings; in the absence of custody, there is still no sound judicial reason why the petitioners cannot invoke the general jurisdiction of a district court to review administrative decision and order upon the Constitutional issue of lack of due process at the hands of the administrative agency or person. The liberty of a claimant on bail or personal recognizance in lieu of custody, cannot be a factor in determining whether a district court has jurisdiction to hear a federal claim. At liberty or in custody only determines the nature of the proceedings. I am not concerned with whether Congress could deny aliens in the position of these seamen judicial review. It has not explicitly done so, and I cannot conclude that it has done so implicitly.

Congressional denial of review should be clearly indicated. *Barefield* v. *Byrd*, 320 F.2d 455 (5th Cir. 1963), *cert. den.* 376 U.S. 928 (1964).

A further problem relating to reviewability is posed by these provisions of 5 U.S.C. § 1009(a) (1964 ed.):

> "Judicial review of agency action
>
> "Except so far as . . . (2) agency action is by law committed to agency discretion.
>
> "(a) Any person suffering legal wrong because of any agency action, . . . shall be entitled to judicial review thereof.
>
> * * * *
>
> "(e) So far as necessary to decision . . . the reviewing court shall . . . (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an *abuse of discretion* . . .; (2) contrary to Constitutional right. . . ." [Emphasis supplied.]

The foregoing quotation from § 1009 produces an unacceptable result if read literally. By its terms, the statute grants a court power to review an abuse of discretion except so far as the agency may exercise discretion. The exception altogether consumes the power. However, as

the leading authority has suggested, "[N]othing in the legislative history shows an intent to produce such a drastic change; probably no one during the Act's preparation put these words together in this juxtaposition." Davis, *Administrative Law Text* § 28.16 (1958). To solve the verbal puzzle, Davis suggests the word "committed" be emphasized. "So far as the action is by law 'committed' to agency discretion, it is not reviewable—. . .; it is not 'committed' to agency discretion to the extent that it is reviewable. The two concepts 'committed to agency discretion' and 'unreviewable' have in this limited context the same meaning. The result is that the pre-Act law on this point continues." *Ibid.*

It is certain that the granting or withholding of an alien crewman's parole into the United States under the Attorney General's regulation, 8 C.F.R. § 253.1(e) (1965), lies within the District Director's "discretion" in the sense that he is responsible for receiving and weighing the relevant evidence and that the courts will not substitute judgment. However, I am unable to conclude that the decision relating to parole is "committed to [the Director's] discretion" in the sense, to apply Davis's analysis, of making his findings, conclusions and order unreviewable—even for arbitrariness, capriciousness, or abuse of discretion. Moreover, courts have often refused to recognize even a fairly explicit denial of reviewability when the issues of arbitrariness or abuse of discretion are raised. *Hamel* v. *Nelson*, 226 F.Supp. 96 (N.D. Calif. 1963).

> "[Section 1009(a)] . . . does not extend 'the jurisdiction of the federal courts to cases not otherwise within their competence. . . . The purpose of §[1009(a)] is to define the procedures and manner of judicial review of agency action, rather than to confer jurisdiction upon the courts.' Ove Gustavsson Contracting Co. v. Floete, 2 Cir. 1960, 278 F.2d 912, 914." *Barnes* v. *United States*, 205 F.Supp. 97, 100 (D.Mont. 1962).

I conclude that the exception relating to discretion contained in 8 U.S.C. § 1009 (1964 ed.), does not deprive

this Court of jurisdiction to review Urbano's findings, conclusions, and order upon the contentions of the petitions above outlined, and further that 8 U.S.C. §§ 1009 (b) (e) provide procedures and scope of judicial review of Urbano's findings, conclusions, and orders upon the issues raised by the contentions of review of the petitions.

Having so concluded, it is my obligation to deal with the record of the evidentiary hearing upon which Urbano's findings, conclusions, and order are premised, under the searchlight of petitioners' contentions.

I have perused *in camera* the administrative files of respondent Service and find nothing therein that in anywise tends to impeach or discredit the discovery depositions testimony of Urbano and Pattillo.

I have reviewed the entire record as developed and placed before Urbano upon the petitioners' claim of physical persecution for political belief if returned to Yugoslavia, and conclude that Urbano did not abuse his discretion in denying the applications for parole, nor are his findings and order lacking a foundation. Evidence substantiating the petitioners' claim of physical persecution for their political beliefs is conspicuous by its complete absence.

The petitioners make no claim that Urbano's decision and order is illegal.

I find the entire record before Urbano and this Court devoid of any evidence whatsoever that Urbano acted fraudulently, arbitrarily, or capriciously in his evaluation of the evidence before him.

The petitioners have claimed Urbano was personally biased in denying their parole and that he should have been disqualified. The asserted bias is based in large part upon alleged facts known prior to the hearing. Under § 7(a) of the Administrative Procedure Act, 5 U.S.C. § 1006(a) (1964 ed.), disposition of allegations of bias is initially the agency's responsibility. The allegations are to be raised by "the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification," and "the *agency* shall determine the matter as a part of the record and decision in the case." [Emphasis supplied.] However, the petitioners raised the issue of

personal bias for the first time in these proceedings following the evidentiary hearing, and under the provisions of § 1006(a), as usually applied, lost their opportunity to assert the question of bias. Davis, *Administrative Law Text* § 12.06 (1958). "The issue of bias must be raised neither too soon nor too late." *Ibid.* Nevertheless, the Court has examined the record before it and finds the claims of bias groundless.

The evidentiary record discloses that each of these petitioners enjoyed a good civilian and governmental status in his country at the time he departed on the voyage ultimately bringing him to the United States, in spite of his now-avowed anti-Communistic political beliefs.

What "physical persecution," if any, they will receive upon their return to their own country, will be due to their voluntary desertion of their ship and other voluntary acts and averments occurring since.

These causes have aroused a great deal of public sympathy for the petitioners, all without full advice as to the facts and circumstances. Granted, the petitioners may be anti-Communistic in their political beliefs, and in all probability would be good citizens of the United States; nevertheless, Congress has not seen fit to provide for lawful entry or permanent refuge in the United States (other than by established quotas for citizens of nations with Communistic Governments) on the sole ground that those individuals are not sympathetic with that Communistic Government. Neither Urbano nor this Court can make such legislation.

The respondents' motion for summary judgment in their favor should be allowed, and counsel for the respondents may submit appropriate order of summary judgment dismissing the petitioners' complaints and causes and dissolving the stay order now in effect.

DATED July 9, 1965.

[Filed July 20, 1965]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 65-10

VELJKO STANISIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

JUDGMENT

The above cause having come on before the Court upon the petitioner's "Motion For Review" and upon the government's Motions for Summary Judgment and the Court having considered the administrative record, documents, affidavits and depositions together with the memorandum and arguments of counsel and having filed its written Opinion dated July 9, 1965 herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that summary judgment be and it is granted to the government, that the earlier orders staying and restraining the removal of the petitioners from the United States be and they are dissolved, and that this case be and it is dismissed.

Dated this 20th day of July, 1965.

/s/ William G. East
WILLIAM G. EAST
District Judge

PRESENTED BY:

/s/ Donal D. Sullivan
DONAL D. SULLIVAN
First Assistant U. S. Attorney

[Filed June 22, 1966]

BEFORE THE
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of) A 15 620 991
VELJKO STANISIC, PETITIONER) PETITION FOR PAROLE

Pursuant to the provisions of 8 USCA 1254 and 8 USCA 1253, and 1255 your petitioner shows:

I.

Since the date of the last hearing herein the applicable statute has been amended and liberalized on October 3, 1965 by Public Law 89-236, effective January 1, 1966, so as to eliminate the requirement of physical persecution, and the Attorney General is now authorized, pursuant to 8 USCA 1253 (h) as amended, to withhold deportation of an alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion.

II.

Your petitioner stipulates that the record made heretofore and herein is accepted as part of the record of this petition and shows anticipated persecution on account of religion and political opinion.

III.

Your petitioner has pending in the Circuit Court in Lane County, Oregon, a case for damages for assault and battery in which he is the plaintiff, and the deportation of your petitioner will deprive him of his right to recovery for damages and property wilfully destroyed.

WHEREFORE, your petitioner respectfully requests that:

1. Deportation to Yugoslavia be stayed on the basis of anticipated persecution on account of religious

and political opinion, and on account of pending litigation.

2. A hearing be held in due course before a Special Inquiry Officer of the Immigration Service.
3. In the alternative and in the event of denial of this petition, your petitioner may depart voluntarily from the United States at his own expense.

/s/ Veljko Stanisic

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
Portland, Oregon

In the Matter of	)	A 15 620 991
VELJKO STANISIC, PETITIONER	)	PETITION FOR PAROLE

The petitioner in this matter served through his attorney, G. Bernard Fedde, a Petition for Parole into the United States. In this petition he alleges in Item I that since the date of his last hearing the applicable statute has been amended and liberalized on October 3, 1965 by Public Law 89-236, so as to eliminate the requirement of physical persecution.

The petitioner alleges in Item III that he is plaintiff in an assault and battery case pending in the Circuit Court in Lane County and that his deportation will deprive him of his right to recovery. He further requests deportation be stayed on the basis of anticipated persecution on account of religious and political opinion and on account of pending litigation; further, that a hearing be held in due course before a Special Inquiry Officer of the Immigration and Naturalization Service and in the alternative that he be permitted to depart voluntarily from the United States at his own expense.

In answer to Item I the petition no doubt refers to the amendment of 8 U.S.C. 1253(h) which was amended by the Act of October 3, 1965, Public Law 89-236. The matter as to whether that provision of regulations was pertinent to the petitioner's case was decided by the United States District Court at Portland, Oregon and the Court found that this regulation was not applicable to this petitioner's case and that the Immigration and Naturalization Service had properly decided the matter under 8 C.F.R. 253.1(e); however, the revision of 8 U.S.C. 1253(h) served only, as relates to this matter, to make it read identical to the provisions of 8 C F.R. 253.1(e) as it existed at the time the original decision was made, and as it now exists.

In answer to Item III, the Clerk of the Circuit Court, Lane County and the Clerk of the District Court at Lane County, advise that there are no actions pending in which the petitioner is a party. Further, the United States District Court at Portland, Oregon has already ruled that the petitioner is not entitled to a hearing before a Special Inquiry Officer of this Service.

The petitioner is amenable to removal from the United States under the provisions of Section 252(b) of the Immigration and Nationality Act. Under these provisions he is to be placed in the custody of the steamship company which brought him to the United States and his deportation from the United States is to be effected by the steamship company.

In view of the foregoing and in view of the fact that the United States District Court at Portland, Oregon has, after long deliberation, rendered a decision that the petitioner would not be subject to persecution on account of race, religion, or political opinion, and that the proceedings held in the petitioner's case were properly held under the provisions of 8 C.F.R. 253.1(e), and he was not en-

titled to a hearing before a Special Inquiry Officer, the petition is denied in its entirety.

/s/ Alfred J. Urbano
ALFRED J. URBANO
District Director

June 23, 1966

[Filed June 23, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 66-333

VELJKO STANISIC, PETITIONER

-vs-

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

COMPLAINT

Comes now the petitioner and alleges:

I.

Petitioner is an alien and a citizen of Yugoslavia and until recently, a crewman aboard the SS Sumadija, a Yougoslavia [*sic*] flag vessel which docked at Coos Bay, Oregon, on or about January 4, 1965.

II.

Respondent, Alfred J. Urbano, is the District Director of the United States Immigration and Naturalization Service with his office at Portland, Oregon.

III.

That on January 4, 1965, petitioner left the aforesaid vessel and entered the United States.

IV.

That petitioner seeks political asylum in the United States of America and desires in the alternative not to be sent or returned to Yugoslavia or any other communist dominated country for the reason that he and his family have been persecuted by the Communists in Yugoslavia because they are anti-communist and Greek Orthodox, and petitioner, should he return to Yugoslavia or a Communist country, would be in danger of being persecuted, abused, or killed for his religious and political opinions.

V.

That petitioner has applied through a Petition for Parole to the Immigration and Naturalization Service for a hearing upon the above complaint before a Special Inquiry Officer, but the lawful administrative procedure has been ignored by the decision offhand of the District Director of Immigration without any hearing whatever.

VI.

That on June 21, 1966 the District Director of Immigration and Naturalization Service issued his order directing that the petitioner appear for removal from the United States on June 24, 1966, about 70 hours later.

VII.

That the foregoing action of the District Director of Immigration and Naturalization was arbitrary and capricious in the following particulars:

1. The District Director refused to grant any real hearing on the record and facts in light of the statute applicable thereto.

2. The District Director refused to give any opportunity to present new evidence.
3. The District Director deprived the petitioner of his constitutional right to procedural due process and a judicial hearing on the merits.
4. The determination of the District Director is not supported by the evidence.
5. The District Director refused to grant a hearing before a Special Inquiry Officer.
6. The District Director has consistently shown his personal prejudice and yet has insisted on deciding all matters in connection with this case.

VIII.

That the vessel upon which the petitioner came to the United States has long since departed from the territorial waters of the United States, and there is no haste to overtake said vessel.

IX.

That your petitioner if returned to Yugoslavia or to any other Communist dominated country will be subject to religious and political persecution and is in immediate danger of life and limb. That there is no other adequate remedy at law.

WHEREFORE, your petitioner prays for an Order of this Court:

1. Reversing the Order of June 23, 1966, of Alfred J. Urbano, District Director of the Immigration and Naturalization Service, and pursuant to 8 USCA Sec. 1253(h), entering a Judgment and Order restraining the respondents from removing petitioner from the United States of America, or otherwise deporting or excluding him pending trial of the issues; and

2. For such other and further relief as may be appropriate in the premises.

/s/ Don Eva
DON EVA

/s/ G. Bernhard Fedde
G. BERNHARD FEDDE
Attorneys for Petitioner
1125 Failing Bldg.
Portland, Oregon 97204
226-2688

[Alien's affidavit of verification omitted in printing]

[Filed June 23, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 66-333

VELJKO STANISIC, PETITIONER

-vs-

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

MOTION TO RESTRAIN

Upon the complaint of the petitioner and the affidavit of his counsel annexed thereto, petitioner moves the Court as follows:

1. To issue a temporary restraining order suspending and restraining the respondents, their agents, servants, employees and attorney, and all persons in active concert

and participation with them, from taking the petitioner into custody or deporting him from the United States pending a hearing upon the issuance of a preliminary injunction sought hereinafter in this motion and the determination thereof.

2. The grounds of this motion, as more fully set forth in the Complaint and attached affidavit of counsel, among others, are:

(a) That petitioner has pending an administrative hearing upon which no determination has yet been made.

(b) That respondents failed and refused to exercise the discretion vested in them by law as a prerequisite to entering an order denying petitioner's application for suspension of deportation and directing that he depart from the United States.

(c) Unless the respondents are enjoined they will take the plaintiff into custody and deport him thus ousting this court of jurisdiction over the petitioner which will in turn deprive him of any remedy to adjust his status.

(d) The petitioner is an alien eligible for suspension of deportation by reason of the provisions of Section 19 (e) of the Immigration Act of 1917, as amended.

(e) Unless the respondents are restrained pending the final disposition of this request for judicial review, the petitioner will be irreparably injured even though in the final analysis judgment might be rendered in his favor.

/s/ Don Eva
DON EVA

/s/ G. Bernhard Fedde
G. BERNHARD FEDDE
Attorneys for Petitioner
1125 Failing Bldg.
Portland, Oregon 97204

[Affidavit of Counsel omitted in printing]

[Filed June 23, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 66-333

VELJKO STANISIC, PETITIONER

-vs-

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

ORDER TO SHOW CAUSE

TO: UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service:

Upon reading and filing the verified complaint of petitioner in this suit, and the affidavit of G. Bernhard Fedde, and it appearing to the satisfaction of the court therefrom that this is a proper case for granting a temporary restraining order, and that unless the temporary restraining order prayed for in said complaint be granted great injury will result to the petitioner before the matter can be heard on notice; now, therefore,

It is hereby ORDERED that the respondents, United States Immigration and Naturalization Service and Alfred J. Urbano, District Director, United States Immigration and Naturalization Service, be and appear before this courtroom of department ..... thereof, at the hour of 9 AM, O'clock, on June 24, 1966, then and there to show cause, if any they have, why they, their agents, servants, employees, and attorney, should not be enjoined and restrained during the pendency of this suit from taking the petitioner, Veljko Stanisic, into custody or de-

porting him from the United States until after a full hearing upon the pending litigation.

Dated this 23rd day of June, 1966.

/s/ John F. Kilkenny
District Judge

[Filed June 24, 1966]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 66-333

VELJKO STANISIC, PETITIONER

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Services [*sic*], RESPONDENTS

FINDINGS AND JUDGMENT

The above cause having come on before the Court upon the petitioner's Motion to Restrain and petitioner appearing by G. Bernhard Fedde and the respondents appearing by Sidney I. Lezak, United States Attorney, and the Court having considered the record in Civil 65-10 in this Court between the same parties and the opinion of the Honorable William G. East filed in that case and arguments having been made, and

It appearing from the entire record that there was substantial evidence in support of the findings and order of respondents, and being now fully advised,

IT IS ORDERED, ADJUDGED, and DECREED that petitioner's motion to restrain be, and the same is hereby, denied.

DATED this 24th day of June, 1966.

/s/ John F. Kilkenny
District Judge

[Filed July 29, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. 66-333

VELJKO STANISIC, PETITIONER

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

MOTION

COMES NOW the plaintiff and respectfully moves this Court as follows:

1. For an Order directing the defendants United States Immigration and Naturalization Service, and Alfred J. Urbano, its District Director, to surrender to the Clerk of the United States District Court for inclusion in the record on appeal in the above entitled cause the entire administrative file which was submitted to the Honorable William G. East for inspection at the time of hearing and deciding Case No. 65-10, involving the same parties.

2. For an Order authorizing the Clerk of the District Court to send the originals only of the depositions in the file of Case no. 65-10.

3. For an Order sending the entire file in Case No. 65-10 together with the file in this case No. 66-333 now on appeal.

4. For an Order granting an extension of thirty days for docketing the appeal in the Court of Appeals.

This Motion is based on Rule 73 (g).

July 29-1966

/s/ G. Bernhard Fedde
Of Attorneys for Petitioner
G. BERNHARD FEDDE
1125 Failing Bldg.
Portland, Oregon 97204

Presented by

/s/ G. Bernhard Fedde
G. BERNHARD FEDDE

SO ORDERED:

/s/ John F. Kilkenny
United States District Judge

Excerpts from Yugoslav laws tendered to court of appeals on morning of oral argument (May 10, 1967):

International Labour Office

Legislative Series 1949—Yug. 3

YUGOSLAVIA 3

Decree: Merchant Seamen

Decree respecting the crews of ships in the Mercantile Marine of the Federative People's Republic of Yugoslavia. Dated 17 September 1949. (*Sluzbeni List*, 21 September 1949, No. 80, p. 1117.)

* * * *

II. CREWS

* * * *

11. Where the service or employment relationship of a member of the crew terminates in the course of a voyage and it is necessary for such member of the crew to continue his work, the master may keep him at work as long as the necessity lasts.

12. The member of the crew may not apply to any body in a foreign port other than the master or the Yugoslav consular representative, if there is such a representative at the port in question.

* * * *

14. No member of the crew shall leave his prescribed duties on board or leave the ship without the permission of the master or his deputy.

* * * *

IV. DISCIPLINARY LIABILITY OF MEMBERS OF THE CREW

46. Failure on the part of members of the crew to carry out their duties shall constitute either offences or grave offences against discipline.

47. By offences against discipline shall be understood less serious cases of failure to carry out duties, or conduct prejudicial to the good name of the service, namely:

(1) leaving the ship without permission;

* * * *

(4) failure to observe the rules of the service;

* * * * *

48. By grave offences against discipline shall be understood serious cases of failure to carry out duties or conduct prejudicial to the good name of the service.

Grave offences against discipline shall include the following, in addition to the offences referred to in section 65 *(c)* of the Civil Service Act:

* * * *

(5) unjustified absence from the ship;

* * * *

50. The penalties for grave offences against discipline shall be, in addition to the penalties prescribed in section 67 of the Civil Service Act, confinement on board for not more than seven days—with permission, however, to go on shore once during each stay of the ship in port—and also forfeiture of the right to serve at sea for not less than one and not more than three years or forfeiture of such right for ever on State ships.

51. Penalties in respect of grave offences against discipline shall be decided by the appropriate disciplinary court if it is possible for disciplinary proceedings to be instituted in such a court immediately after the grave offence has been committed. If that is not possible, the master of the ship shall impose penalties in respect of grave offences against discipline, with the exception of the penalties of forfeiture of the right to serve at sea and dismissal from the service.

52. No disciplinary sanction may be imposed on any member of a crew until he has been heard.

The master shall fix the penalty in a decision in writing. A copy of the decision shall be delivered to the shipowner, and the case shall be entered in the ship's logbook.

53. The member of the crew or the trade union organisation shall have the right to appeal against the decision of the master imposing a penalty in respect of a grave offence against discipline to the appropriate disciplinary

court, whose decision shall be final. The application shall be lodged with the master of the ship within 15 days of the delivery of the decision.

The appeal shall not stay execution of the penalty.

54. If the member of the crew has through the offence or grave offence against discipline caused material loss or damage to the ship, the master may in his decision order compensation not exceeding 5,000 dinars to be paid for the loss or damage incurred.

The member of the crew shall have the right to appeal through the master of the ship to the shipowner against the decision respecting compensation; the appeal shall be lodged within 15 days of the delivery of the decision.

55. In all other matters the general provisions respecting the disciplinary and material liability of civil servants or persons employed in economic undertakings of the State shall apply to members of crews.

International Labour Office

Legislative Series 1948—Yug. 1

YUGOSLAVIA 1

Decree: Contracts of Employment

Decree respecting the formation and cessation of the employer-employee relationship. No. 711 Dated 27 September 1948. (*Sluzbeni List Federativne Narodne Republike Jugoslavije*, 2 October 1948, No. 84, p. 1293; *corrigenda: ibid.*, 13 October 1948, No. 87, p. 1370.)

* * * * *

[31. If any manager or other responsible person in an undertaking or any other employer—]*

* * * * *

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* Bracketed matter was not part of the excerpted material tendered to the court of appeals. It has been supplied from the original by the compiler of the Appendix to give context to the provisions immediately following.

(4) before the expiration of the agreed term or completion of the specified work, terminates a relationship contracted in writing for a specified time or for the execution of specified work (article 18), unless there is a written agreement to dissolve or vary the contract of employment;

(5) fails to report to the appropriate executive committee of the district (town, ward) people's committee any employee who has terminated a relationship of employer and employee without notice or abandoned work before the expiration of the period of notice (article 24);

* * * *

(8) through his own fault fails to fulfil his obligations under a contract as regards transport, board and lodging for the employee;

* * * *

he shall be punished with a fine of not less than 500 and not more than 10,000 dinars.

32. If any employee—

(1) terminates a relationship with an employer without notice or abandons work before the expiration of the period of notice, otherwise than in the cases mentioned in article 26 of this Decree;

* * * *

(3) before the expiration of the period of notice or before the completion of the specified work, terminates a relationship contracted in writing for a specified time or for the execution of specified work (article 18), unless there is a written agreement to dissolve or vary the contract of employment;

* * * *

he shall be punished with a fine of not less than 100 and not more than 5,000 dinars or a term of corrective labour not exceeding one month.

33. Administrative penal proceedings shall be conducted and the penalties imposed by the executive committees of the district (town, ward) people's committees in ac-

cordance with the provisions of the Basic Law on Offences.[1]

At the request of the labour inspection office or manpower board, or if the minister of labour of the people's republic or Federal Minister of Labour so determines, administrative penal proceedings for offences under article 31 of this Decree may also be conducted and the penalties imposed by the minister of labour of the people's republic or the Federal Minister of Labour, after proceedings have been carried out by an official designated by the minister of labour.

Where administrative penal proceedings have already commenced before the appropriate executive committee of the district (town, ward) people's committee, the minister of labour of the people's republic or the Federal Minister of Labour may take over the commenced proceedings.

* * * *

International Labour Office

Legislative Series 1965—Yug. 4

YUGOSLAVIA 4

Decree to promulgate a Basic Act respecting employment relationships. Dated 4 April 1965. (*Sluzbeni List*, 7 April 1965, No. 17, Text 352; errata: ibid., 5 May 1965, No. 21, p. 982.)

* * * *

8. *Cessation of Employment in Organisations Where Workers Are Employed*

96. * * *

* * * *

(3) A person ceasing to work in an organisation by his own unilateral decision and contrary to the provisions of subsection (2) of this section shall be deemed to have committed a serious breach of his duties.

---

[1] Law of 3 December 1947 (*Sluzbeni List FNRJ*, 17 December 1947, No. 107, p. 1497).

(4) A person ceasing to work by his own unilateral decision, as provided in subsection (3), shall compensate the organisation to an amount equal to the average advances payable to him on his personal income for the period for which he was required to continue working, unless the prejudice sustained by the organisation as a result of his decision was more serious.

* * * * *

CRIMINAL CODE

PUBLICHED [*sic*] BY UNION OF JURISTS' ASSOCIATIONS
OF YUGOSLAVIA
BEOGRAD
1960

* * * * *

The Punishment of Severe Imprisonment

Article 28

The punishment of severe imprisonment may not be shorter than one year nor longer than fifteen years, and it shall be pronounced in round years and months.

Commutation of the Death Penalty

Article 29

(1) The death penalty may be commuted by amnesty or reprieve to severe imprisonment for a term of twenty years.

(2) Likewise also the Court may, for justified reasons, commute the death penalty to severe imprisonment for a term of twenty years.

The Punishment of Imprisonment

Article 30

(1) The punishment of imprisonment may not be shorter than three days nor longer than three years.

(2) The punishement [*sic*] of imprisonment shall be pronounced in round years and months, and in the event of terms of up to three months even in round days.

Articles 31 to 35

Abolished.

The Punishment of Confiscation of Property

Article 36

The punishment of confiscation of property consists in the seizure of the property of the convicted person without compensation within limits provided by law.

Fine

Article 37

(1) A fine may not amout [*sic*] to less than one-thousand dinars. Unless otherwise provided by law, a fine may be imposed up to the amount of one-hundred thousand dinars, and for criminal offences committed for personal gain up to one million dinars.

(2) The judgment rendered shall determine the term for the payment of fine, which term may not be less than fiften [*sic*] days nor more than three months, but in warranted cases the Court may allow the convicted to pay the fine in instalments. In such a case the Court shall determine the mode of payment and the term of payment, which may not exceed the period of two years.

Legal Consequences of Conviction

Article 37A

(1) It may be prescribed by law that the convictions for particular criminal offences or to particular punishments shall involve these legal consequences:

1) cessation of the exercise of elective functions in the State organs, the organs of social self-government, in economic or social organizations:

2) termination of service, employment, office or the exercise of a particular profession;

3) loss of rank;
4) forfeiture of decorations;
5) debarment from coming out in the press, on the radio or television or at public assemblies, from participation in the founding of associations and from exercise of publishing activity;
6) debarment from the performance of particular tasks in the State organs the organs of social self-government, in economic and social organizations;
7) debarment from acquiring a particular office or profession.

(2) The law prescribing the legal consequences from Paragraph 1, Point 5 to 7, of this article shall also determine their duration, which may not be longer than ten years from the date when the punishment has been served, pardoned or extinguished by prescription. That law may also provide the conditions under which these legal consequences may terminate even before the expiration of the period for which they were provided.

(3) The legal consequences from Paragraph 1, Point 2 to 5 and 7, of this article may be provided by Federal Law only, and the legal consequences from Point 1 and 6 by the laws of the People's Republics also, within their jurisdiction.

* * * *

General Rule Relating to Fixing the Degree of Punishment

Article 38

For a particular criminal offence the Court shall fix the degree of punishment within the limits provided by law for that offence, with due consideration for all the circumstances influencing the punishment to be severer or milder (aggravating and extenuating circumstances), and especially the degree of criminal liability, the motives from which the offence was committed, the intensity of the danger or wrong to the protected object, the circumstances under which the offence was committed, the earlier life, the personal circumstances and the behaviour of the offender after the commission of the criminal offence.

* * * *

Application of Criminal Law Against Whoever Commits a Criminal Offence on the Territory of Yugoslavia

Article 91

* * * *

(2) The criminal law of Yugoslavia shall also be applied against whomsoever committed a criminal offence on a domestic ship without distinction as to is [*sic*] whereabouts at the time of commission of the offence.

* * * *

Application of the Criminal Code Against Whoever Committs [sic] Particular Criminal Offences Abroad

Article 92

The present Code shall be applied against whoever committs [*sic*] outside the territory of Yugoslavia any of the criminal offences provided by the present Code in Articles 100 to 112, 114 to 118, 120, 121 and in Article 221 in so far as the offence relates to domestic currency.

* * * *

Counter-Revolutionary Attack Against the State and Social Order

Article 100

Whoever commits an act aimed at overthrowing by force or in another unconstitutional way the authority of the working people or at deposing the elected constitutionally established representative bodies, Federal, Republican, autonomous or local, as well as the executive organs of those representative bodies; or whoever commits an act aimed at undermining the economic foundations of socialist construction; or whoever commits an act aimed at breaking up the unity of the peoples of Yugoslavia; or at changing the federative organization of the State by force or in another unconstitutional way, shall be punished with severe imprisonment.

* * * *

Participating in Hostile Activity Against Yugoslavia

Article 109

The citizen of Yugoslavia who with intent to overthrow the State and social order or for any other hostile activity against Yugoslavia establishes contact with a foreign State, foreign organization or a particular foreign or refugee group of persons, or who assists them in the performance of hostile activities,

shall be punished with severe imprisonment.

Escape for Purposes of Hostile Activity

Article 110

(1) The citizen of Yugoslavia who for purposes of performing hostile activity against his homeland escapes abroad, or prepares to escape, or remains abroad without authorization,

shall be punished with severe imprisonment of up to twelve years.

(2) Whoever creates a group for moving escapees abroad or becomes a member of such a group,

shall be punished with severe imprisonment.

* * * *

Hostile Propaganda

Article 118

(1) Whoever calls for or incites with writings, speech or otherwise the violent or unconstitutional change of the social or State order, the overthrow of the representative bodies or their executive organs, the breaking up of the brotherhood and unity of the peoples of Yugoslavia or resistance to the decisions of the representative bodies or their executive organs which are of significance for the protection and development of socialist social relationships, the security or defense of the country, or whoever represents the social-political conditions in the country maliciously and untruthfully,

shall be punished with severe imprisonment of up to twelve years.

(2) Whoever infiltrates himself into the territory of Yugoslavia for the performance of hostile propaganda, or whoever commits the offence from Paragraph 1 of this article aided or influenced from abroad,

shall be punished with severe imprisonment.

(3) Whoever performs infiltration of agitators or propaganda-material into the territory of Yugoslavia

shall be punished with severe imprisonment of not less than three years.

Provocating to National, Racial or Religious Intolerance, Hatred or Discord

Article 119

(1) Whoever, with propaganda or otherwise, provocates or fans national, racial or religious hatred or discord between the peoples and nationalities living in Yugoslavia [*sic*],

shall be punished with severe imprisonment of up to twelve years.

(2) If the offence from Paragraph 1 of this Article is carried on systematically or by exploiting one's office or function, or if disorder, the commission of violence or other grave consequences occurred as a result of the offence,

the offender shall be punished with severe imprisonment.

(3) Whoever provocates national, racial or religious intolerance by insulting the citizens or otherwise,

shall be punished with severe imprisonment.

* * * *

Grave Criminal Offences Against the People and the State

Article 122

For offences from Articles 100, 104, Paragraph 3, 107, 116 and 117, Paragraph 1 of the present Code, if they were committed in a state of alert, mobility or war, or if

they caused death to some person, or if they were accompanied by grave violence, or if they caused a threat to the security, the economic or military capacity of the State,

the perpetrator shall be punished with severe imprisonment of not less than ten years or with the penalty of death.

Inflicting the Punishment of Confiscation of Property

Article 123

In pronouncing a sentence severer than three years of severe imprisonment, the Court may punish the perpetrator of a criminal offence against the people and the State with confiscation of property.

* * * *

Damaging the Reputation of the State, Its Organs and Representatives

Article 174

Whoever brings the Federal People's Republic of Yugoslavia, a people's republic, their flag or coat of arms, their highest organ of State authority or the representatives of the highest organs of State authority, the Armed Forces or the supreme Commander into derison [*sic*],

shall be punished with imprisonment of not less than three months.

[Filed February 9, 1968]

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 21272

VELJKO STANISIC, PETITIONER

-vs-

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

MOTION

COMES NOW the petitioner and moves the court for an order requiring the respondent, United States Immigration and Naturalization Service, Department of Justice, to ascertain through diplomatic representations of the United States Government to the Yugoslav Government:

1. The exact charges, if any, which will be made against the petitioner in the event he is returned to Yugoslavia.
2. The maximum punishment which will be inflicted.
3. To request the Yugoslav Government to give guaranties that the petitioner will not be subjected to persecution, economic, psychological or physical, in the event he is returned to Yugoslavia, and in the event he is jailed, that he be assured of humane treatment and reasonable and seasonable access to him by his legal counsel and family in Yugoslavia, in the event he is returned to Yugoslavia.

And the petitioner further moves the court, in the event that the court affirms the decision of the United States District Court, for an order suspending further deportation proceedings until a satisfactory answer and guaranties have been received from the Yugoslav Government.

The foregoing motion is made on the basis of fact that the Yugoslav Government is a Communist Dictatorship, of which this court can take judicial notice, and upon the following attachments which are made part of this motion by reference:

1. Page 124 of the issue of News Week magazine, a national news magazine, dated May 16, 1966, containing therein an article entitled "The Ordeal of Djilas".
2. An Associated Press article appearing in the Thursday, August 11, 1966 edition of the Oregonian published in Portland, Oregon, relating to the jailing of Mihajlo Mihajlov.
3. Page 44 of the issue of News Week Magazine, a national news magazine, dated April 3, 1967, containing therein an article entitled "Yugoslavia, Conversation with Djilas".
4. An Associated Press article appearing in the Thursday, April 20, 1967, edition of the Oregonian published in Portland, Oregon, relating to the punishment of one Mihajlo Mihajlov.
5. An Associated Press article appearing in the Wednesday, October 11, 1967, issue of the Oregonian, published in Portland, Oregon, relating to the punishment of Marjan Rozanc.

/s/ G. Bernhard Fedde
G. BERNHARD FEDDE
Attorney for Petitioner

[Filed April 17, 1968]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21,272

VELJKO STANISIC, APPELLANT

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, ETC., APPELLEES

ORDER

Before: BROWNING, DUNIWAY, and ELY, Circuit Judges.

Appellant's motion of February 8, 1968, filed in this court on February 9, 1968, is denied.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21,272

VELJKO STANISIC, APPELLANT

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, ETC., APPELLEES

[April 17, 1968]

Appeal from the United States District Court
for the District of Oregon

Before: BROWNING, DUNIWAY, and ELY, Circuit Judges.

BROWNING, Circuit Judge:

Appellant Stanisic, a national of Yugoslavia, arrived in Coos Bay, Oregon, as a crewman board the M-V SUMADIJA, a Yugoslavian vessel. He was issued a shore leave permit, authorizing him to go ashore while his ship was in port, by a United States immigration officer pursuant to 8 U.S.C. § 1282(a)(1) (1964) and 8 C.F.R. § 252.1(d)(1).

Three days later, after several visits ashore, appellant presented himself at the office of the District Director of the Immigration and Naturalization Service at Portland, Oregon, and requested asylum. His landing permit was immediately revoked under the authority of subsection (b) of section 1282, which provides that "any immigration officer may, in his discretion, if he determines that an alien . . . does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a)(1) of this section, take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States. . . . Nothing in this section shall be construed to require the procedure prescribed in section 1252 of this title to cases falling within the provisions of this subsection."

On the following day appellant was offered an opportunity to make a showing before the District Director in support of his claim for asylum under 8 C.F.R. § 253.1(e), which provides that an alien crewman whose "conditional landing permit issued under § 252(d)(1) of this chapter is revoked who alleges that he cannot return to a Communist . . . country because of fear of persecution in that country on account of race, religion, or political opinion may be paroled into the United States under the provisions of section 212(d)(5) of the Act [8 U.S.C. § 1182(d)(5)] . . . ."

Appellant's counsel refused the offer, contending that appellant was entitled to have his claim considered, not as

an application for parole under the regulation, but rather as a petition for stay of deportation under 8 U.S.C. § 1253 (h) (1964), which (as it then read) authorized the Attorney General to withhold deportation "of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution . . . ." Appellant's counsel contended that the claim should be heard in accordance with the procedures established by 8 U.S.C. § 1252(b) (1964), which included a hearing before a Special Inquiry Officer with a full array of procedural protections, followed by administrative review.

The District Director denied appellant's claim for asylum for want of a supporting showing, and ordered that appellant be returned to his ship. Appellant's counsel filed suit in the court below seeking review of the District Director's order and injunctive relief.

The district court held that appellant was not entitled to a section 1252(b) hearing because of the express provision of section 1282(b), quoted above, that "Nothing in this section shall be construed to require the procedure prescribed in section 1252 of this title to cases falling within the provisions of this subsection." However, the court stayed the District Director's order and referred the matter back to the District Director with instructions to hold a hearing under 8 C.F.R. § 253.1(e).

Appellant offered evidence in support of his claim before a delegatee of the District Director. On the basis of the record made, the District Director concluded that the facts "do not establish that applicant has shown that he would be physically persecuted if he were to return to Yugoslavia," and denied relief. The district court, which had retained jurisdiction, sustained the administrative action, and dissolved the stay order. *Stanisic* v. *Immigration & Naturalization Service*, 243 F.Supp. 113 (D. Ore. 1965).

Appellant did not appeal, but instead unsuccessfully petitioned Congress for a private bill. When the District Director thereafter ordered appellant to appear for removal, appellant submitted a renewed application for stay of deportation under section 1253(n), pointing out that subsequent to the hearing by the District Director on appellant's prior application, the statute had been amended

to remove the limitation of relief to cases involving "physical" persecution. Appellant requested a full section 1252(b) hearing under the revised standard. He also sought permission to depart voluntarily at his own expense if his petition were rejected.

The District Director denied the new application without a hearing. He stated that the first hearing had been held under the regulation, rather than the statute, and that the regulation had always read as the statute was later amended to read. He reiterated his position that appellant was not entitled to section 1252(b) procedures, and relied upon the earlier district court decision approving this view. He rejected appellant's request for voluntary departure on the ground that under section 1282(b) appellant "is to be placed in the custody of the steamship company which brought him to the United States and his deportation from the United States is to be effected by the steamship company." The District Director therefore denied appellant's petition in its entirety and ordered appellant to appear for removal three days later.

Appellant filed a complaint in the district court, challenging the District Director's decision and praying for a restraining order on various grounds which, so far as necessary to our decision, are stated below. Appellees answered. The district court entered judgment on the pleadings, denying appellant any relief. This appeal followed.

Both sides support the jurisdiction of the district court to enter the judgment appealed from.

Since the order of the District Director was not entered in a section 1252(b) proceeding, it is not within the purview of 8 U.S.C. § 1105a(a) (1964), which vests exclusive jurisdiction to review section 1252(b) orders in the Courts of Appeals. *Yamada* v. *Immigration & Naturalization Service*, 384 F.2d 214 (9th Cir. 1967).

Since the order was not one made under the provisions of 8 U.S.C. § 1226 (1964), appellant's remedy in the district court was not limited to habeas corpus by 8 U.S.C. § 1105a(b) (1964). We see no reason why the order could not be reviewed by the district court under the Administrative Procedure Act, 5 U.S.C. § 1009 (1964)—as that court held in entertaining appellant's first complaint. 243 F.Supp. at 115-16. But even if habeas corpus were the

exclusive remedy, it would be available to appellant, for he was, and now is, subject to a parole order of the District Director. *Jones* v. *Cunningham*, 371 U.S. 236, 243 (1963).

The district court therefore had jurisdiction to review the District Director's order.

Appellees urge us to hold that the question of whether appellant was entitled to the deportation procedures of section 1252(b) was decided against him by the district court in appellant's first action, and since the judgment in that action has become final the issue is not open to re-examination.

Appellant points out that the ship upon which he arrived and on which he was to depart was still in port when the District Director entered the order reviewed in the first action, but that it had departed long before the District Director entered the order attacked in the second action.[1] He contends that this factual difference raises a wholly different legal issue, rendering the second order erroneous, even assuming the correctness of the first.[2]

---

[1] The record does not disclose the vessel's exact sailing date. However, the District Director's second order was entered more than 18 months after the entry of his first order.

[2] The issue which appellant raises here, and the only issue with which we deal, is one of statutory construction. We are not concerned with the constitutionality of the summary deportation proceedings authorized by § 1282(b).

It is suggested in Kordic v. Esperdy, 386 F.2d 232, 236-37 (2d Cir. 1967), quoting from Stellas v. Esperdy, 366 F.2d 266, 269 (2d Cir. 1966), *vacated* 388 U.S. 462 (1967), that "any Constitutional right to full-scale deportation proceedings" is "waived" by acceptance of a landing permit in view of the following provision imprinted on the permit form:

> By accepting this conditional permit to land the holder agrees to all the conditions incident to the issuance thereof, and to deportation from the United States in accordance with the provisions of section 252(b) [8 U.S.C. § 1282(b)] of the Immigration and Nationality Act.

The question before us is the meaning of the phrase "deportation from the United States in accordance with the provisions of section 252(b) of the Immigration and Nationality Act." Obviously appellant has not agreed to any procedures which § 252(b) does not authorize.

We agree. We conclude that subsection (b) of section 1282 authorized appellant's summary deportation aboard the vessel on which he arrived or, within a very limited time after that vessel's departure, aboard another vessel pursuant to arrangements made before appellant's vessel departed.[3] We further conclude that since section 1282 (b) did not authorize summary deportation of appellant in the circumstances existing when the District Director entered the order under review, appellant could be deported only in accordance with sections 1251 and 1252 of the Act.

We turn first to the premise that the general provisions regarding deportation found in sections 1251 and 1252 of the Act apply to alien crewmen who have been permitted to land for shore leave, except as section 1282(b) precludes their application.

Section 1251(a) states that "any alien in the United States (including an alien crewman)" shall be deported if he falls within one of the categories described in that section. Section 1252(b) outlines the procedures "to determine the deportability of any alien." Thus the language of sections 1251 and 1252 is broad enough to include alien crewmen who have landed under section 1282(a) permits if such crewmen are "in the United States," as that phrase is used in section 1251, and are not merely "on the threshold of initial entry," as are persons paroled into the United States under section 1182(d)(5). *Shaughnessy* v. *Mezei*, 345 U.S. 206, 212 (1953). See also *Leng May Ma* v. *Barber*, 357 U.S. 185 (1958); *Lam Hai Cheung* v. *Esperdy*, 345 F.2d 989, 990 (2d Cir. 1965).

Congress apparently thought alien crewmen landing under section 1282(a) permits would be within the reach of the general deportation sections; otherwise the provision in section 1282(b) expressly excluding section 1252 coverage would have been wholly unnecessary.

---

[3] We therefore do not agree with the holding of the Court of Appeals for the Second Circuit in Kordic v. Esperdy, 386 F.2d 232, 237-38 (1967), that if an alien crewman's permit is revoked before the vessel on which he arrived and on which he was to leave departs he is deportable under § 1282(b) at any time thereafter, apparently without regard to the departure of his vessel or how long a period may have elapsed.

The same conclusion as to the congressional understanding is suggested by other elements in the structure of section 1282.

To obtain a landing permit under section 1282(a) an alien crewman "must establish to the satisfaction of the immigrant inspector that he is eligible to enter the United States . . . ." Besterman, Commentary on the Immigration and Nationality Act, 8 U.S.C.A. 1, 39 (1953). He "must have in his possession a valid passport and a visa issued by an American consul" and "must be eligible to enter the United States under the general eligibility rules." *Ibid.*; 8 C.F.R. § 252.1(c).[4]

Section 1282(a) contemplates issuance of landing permits both to crewmen who intend to depart on the vessel on which they arrived and to crewmen who intend to depart on a different vessel.[5] However, the summary procedures of section 1282(b) apply only to those crewmen who were to depart on the vessel on which they arrived. Crewmen who were to depart on a different vessel are to be deported in accordance with sections 1251 and 1252 (*Kordic* v. *Esperdy*, 386 F.2d 232, 237 n. 5 (2d Cir. 1967)); and thus, admittedly, are treated as "in the United States." There is nothing in the language of section 1282 suggesting that some crewmen who land under section 1282(a) conditional landing permits are "in the United States" but that others are not.

Historically, seamen on shore leave have been treated as having "entered" this country for purposes of the immigration laws (see, *e.g.*, *Claussen* v. *Day*, 279 U.S. 398, 401 (1929); *Stapt* v. *Corsi*, 287 U.S. 129 (1932)), and as being subject to deportation in accordance with the general provisions of those laws as persons unlawfully in the United States. *Colovis* v. *Watkins*, 170 F.2d 998, 1000 n. 1 (2d Cir. 1948); Senate Report 1515, 81st Cong., 2d

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[4] Stowaways are among the classes of aliens "excluded from admission into the United States," but alien crewmen are not. 8 U.S.C. § 1182(a)(18) (1964).

[5] Landing permits issued to the former are referred to as "D-1" permits and to the latter as "D-2" permits, from the designation of the applicable subparagraphs of the regulations. See 8 C.F.R. § 252.1(d)(1) and (d)(2).

Sess. 547 (1950). The authorization of conditional landing permits by section 1282(a) did not change the status of crewmen on shore leave. Since the conditional landing permit was an administrative invention found in pre-1952 regulations, it was necessarily considered to be consistent with the pre-1952 law. House Report 1365, 82d Cong., 2d Sess. (1952), 2 U.S. Cong. & Admin. News 1722. The innovation in the 1952 Act was not the conditional landing permit, but the provision for summary revocation and deportation. 1 Gordon & Rosenfield, Immigration Law and Procedure § 6.3a (1967).

Finally, the premise that alien crewmen landed under section 1282(a) permits are deportable on grounds stated in section 1251 in accordance with section 1252 procedures, except only as section 1282(b) provides to the contrary, is supported by holdings, commentary, and practice applying sections 1251 and 1252 to such seamen whenever their cases, for one reason or another, do not fit into the very narrow limits within which summary proceedings are authorized by section 1282(b).[6]

We turn, then, to the question of the reach of the section 1282(b) exception to the general provisions of sections 1251 and 1252.

The section 1282(b) exception is very narrowly drawn. It does not apply to the deportation of crewmen who have "jumped ship" and entered the United States illegally, with no permit at all. As noted above, it does not apply to crewmen issued landing permits authorizing them to depart on vessels other than those on which they arrived. It does not apply to crewmen who have overstayed the

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[6] Matter of M, 5 I.N. 127 (1953); see also Kordic v. Esperdy, 386 F.2d 232, 237 n.5 (2d Cir. 1967); 1 Gordon & Rosenfield, Immigration Law & Procedure § 6.3a (1967). The practice referred to is reflected in a multitude of cases, *e.g.*, Foti v. Immigration & Naturalization Service, 375 U.S. 217 (1963); Cheng Kai Fu v. Immigration & Naturalization Service, 386 F.2d 750 (2d Cir. 1967); Sovich v. Esperdy, 319 F.2d 21 (2d Cir. 1963); Blagaic v. Flagg, 304 F.2d 623 (7th Cir. 1962); Milutin v. Bouchard, 299 F.2d 50 (3d Cir. 1962); vacated on other grounds 370 U.S. 292 (1962); Dunat v. Hurney, 297 F.2d 744 (3d Cir. 1962); Couto v. Shaughnessy, 218 F.2d 758 (2d Cir. 1955); Dolenz v. Shaughnessy, 200 F.2d 288 (2d Cir. 1952); Matter of P, 9 I.N. 368 (1961); Matter of A, 9 I.N. 356 (1961).

twenty-nine day leave period without revocation of their landing permits. It does not apply to crewmen who were to leave on the vessel on which they arrived if their vessels have departed before their landing permits are revoked. In all of these situations crewmen may be deported only in accordance with section 1252(b) procedures.[7]

The purpose and language of section 1282(b) and the content of closely related sections of the Act, particularly when considered in light of the deliberate narrowness of the section 1282(b) exception, strongly suggest that summary deportation is authorized only if it can be accomplished by returning the crewman to his own vessel, with an exception for practical exigencies which goes no farther than to permit prompt deportation on another vessel arranged before the departure of the vessel on which the alien was a crewman.

Congress' purpose was to secure prompt removal of alien crewmen in order to close a "loophole" through which large numbers of alien crewmen had in the past "become lost in the general populace of the country," establishing relationships and statuses which made subsequent deportation difficult.[8] The means adopted was that of summarily revoking alien crewmen's landing permits and returning the alien crewmen to the vessels which brought them. Summary revocation and removal of alien crewmen without hearing or appeal was thought to be necessary if the alien crewmen were to be returned to their vessels without unduly delaying international commerce.[9]

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[7] See note 6.

[8] Senate Report 1515, 80th Cong., 2d Sess., 550-51 (1950). Joint Hearings before the Subcommittees of the Committees of the Judiciary on S. 716, H.R. 2379, and H.R. 2816, 82d Cong., 1st Sess. 156-60 (1951).

[9] Alfred U. Krebs, Counsel of the National Federation of American Shipping, Inc., testifying at Joint Hearings before the Subcommittees of the Committees on the Judiciary on S. 716, H.R. 2379, and H.R. 2816, 81st [*sic:* should read "82d"] Cong., 1st Sess., objected to § 1282(b) on the ground that the transportation company would be charged with the expense of deporting an alien crewman on the basis of an immigration officer's summary determination that the crewmen [*sic*] did not intend to depart with his vessel. Mr. Krebs stated, "It seems to us that there should be some pro-

No other possible justification for this "extraordinary procedure" [10] was suggested.

As we have seen, section 1282(b) distinguishes between alien crewmen who were to depart on the vessel on which they arrived and those who were to depart on a vessel other than that on which they arrived, and provides for summary deportation only of the former. The only conceivable explanation for this distinction is that the summary procedure was intended to be used to put the alien crewmen back on their ship and to require their ship to remove them, or, at least, to arrange for their prompt removal at the ship's expense.[11]

Subsection (b) of section 1282 makes this explicit by providing that when the crewman's landing permit has been summarily revoked, the immigration officer may "require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and de-

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cedure set up for a hearing, or something in that connection." *Id.* at 156; and further, "we do find fault with the fact that it is in the mind of the immigration officer as to what the intentions of that crewman are, without any hearing or any procedure being set up, or any evidence being introduced, to show that this man does not intend to return. That is the thing that we object to about it." *Ibid.*

In the course of the subsequent colloquy between Mr. Krebs and Richard Arens, Staff Director of the Senate Subcommittee, the following appears:

> Mr. ARENS. If they had a hearing, Mr. Krebs, the probabilities are that the ship would have departed before the hearings were over, would it not?
>
> Mr. KREBS. That is possible.
>
> Mr. ARENS. And it is also possible that the 29 days itself would have expired before the hearing is concluded.
>
> Mr. KREBS. That is right. That is certainly possible.
>
> Mr. ARENS. So the net result of requiring the hearing before revocation of the permit to have a seaman land would be that you would not accomplish anything from the standpoint of getting your seaman out of the country.

Id. at 157. See also, House Report 1365, 82d Cong., 2d Sess. (1952), 2 U.S. Cong. & Admin. News 1722.

[10] 1 Gordon & Rosenfield, Immigration Law & Procedure § 6.3a at 6-28 (1967).

[11] Thus the regulations limit issuance of permits to crewmen intending to depart on a vessel other than that on which they arrived

tain him on board such vessel or aircraft, if practicable,[12] and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States."

Section 1284 further implements the legislative scheme in which summary deportation is linked directly to presence of the crewman's vessel. Subsection (a) of section 1284 imposes a fine upon the owner, agent, consignee, charteree, master, or commanding officer of a vessel or aircraft who fails to deport an alien crewman if required to do so under section 1282, and provides that "No such vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid," unless a bond is posted for payment. Subsection (b) of section 1284 provides that "proof that an alien crewman did not appear upon the outgoing manifest of the vessel or aircraft on which he arrived . . . shall be prima facie evidence of a failure to . . . deport such alien crewman."

Subsection (c) of section 1284 is quoted in full in the

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to situations in which "the immigration officer has consented to the pay off or discharge of the crewman from the vessel on which he arrived" (8 C.F.R. § 252.1(d)(2)) when, presumably, there is no longer any relationship between the crewman and the vessel on which he arrived which would justify imposing the duty or expense of his removal upon the vessel.

[12] Later provisions of the statute indicate that the qualification "if practicable" refers to a condition affecting a particular crewman or vessel which renders immediate detention aboard unfeasible, such as illness of the crewman or movement of the vessel to another port of the United States, but not to the departure of the vessel for a foreign port.

The implementing regulations contemplate that a permittee may arrange with the master of his vessel to rejoin his ship at another port in the United States at which it will call before departing for a foreign port. 8 C.F.R. § 252.1. The regulation governing summary deportation of those permittees therefore provides that such a crewman may be taken into custody and "transferred to the vessel upon which he arrived in the United States, if such vessel is in any port of the United States and has not been in a foreign port or place since the crewman was issued his condition [sic] landing permit." 8 C.F.R. § 252.2.

margin.[12] Although the first sentence recognizes that removal of a crewman following summary revocation of his landing permit may be accomplished on a vessel other than the one upon which the crewman arrived, the only alternative authorized is deportation "on another vessel or aircraft of the same transportation line," if this be practicable. The Attorney General is not given general authority to deport the alien crewman by any available means. More significantly, the section contemplates that the alternative arrangement shall be made while the vessel upon which the crewman arrived is still in port—his ship is not to be cleared for departure until the expenses incident to

[12] Subsection (c) of § 1284 provides:

> If the Attorney General finds that deportation of an alien crewman under this section on the vessel or aircraft on which he arrived is impracticable or impossible, or would cause undue hardship to such alien crewman, he may cause the alien crewman to be deported from the port of arrival or any other port on another vessel or aircraft of the same transportation line, unless the Attorney General finds this to be impracticable. All expenses incurred in connection with such deportation, including expenses incurred in transferring an alien crewman from one place in the United States to another under such conditions and safeguards as the Attorney General shall impose, shall be paid by the owner or owners of the vessel or aircraft on which the alien arrived in the United States. The vessel or aircraft on which the alien arrived shall not be granted clearance until such expenses have been paid or their payment guaranteed to the satisfaction of the Attorney General. An alien crewman who is transferred within the United States in accordance with this subsection shall not be regarded as having been landed in the United States.

The concluding sentence of § 1284(c) does not apply to an alien crewman admitted on a landing permit. Its presence is explained by the fact that, as stated in § 1284(a), this section applies not only to alien crewmen permitted to land for shore leave but also to those who are being detained prior to entry pending examination by an immigration officer, to alien crewmen who have been inspected but have not been granted a landing permit, to alien crewmen who have been paroled into the United States under 8 U.S.C. § 1182(a)(5) which "shall not be regarded as an admission of the alien," and to alien crewmen who are hospitalized on arrival as provided in § 1283 for treatment of one of the diseases listed in § 1285 "including an alien crewman ineligible for a conditional permit under section 1282(a)."

the alternative arrangement have been paid or guaranteed.[14]

The accepted construction of section 1282(b), as we have noted, is that its provisions may not be invoked if the attempt to deport a crewman is begun after his ship has sailed, for as the court said in *Kordic* v. *Esperdy*, 386 F.2d 232, 237 (2d Cir. 1967), "the justification for quick resolution of the problem departs with the vessel." See also *Martinez-Angosto* v. *Mason*, 344 F.2d 673, 685 (2d Cir. 1965); *Matter of M*, 5 I.&N. 127 (1953).

This much being conceded, it is difficult to see why the result should be different when section 1282(b) proceedings are begun, but not completed, before the vessel departs. Whenever the statutory scheme for utilizing the availability of an alien crewman's vessel to effect his speedy deportation is frustrated, the justification for quick resolution of the crewman's status is gone. What reason remains for not then affording the crewman the benefits of section 1252?

Although the time and effort which have already been invested in the aborted administrative process would be lost, summary deportation is not authorized simply as a device for saving administrative time, and, in any event, the time and effort invested in summary proceedings is, by definition, minimal. The careful provisions of section 1252 and the narrow scope of the section 1282(b) exception reflect a legislative judgment that, in the absence of exigent circumstances and a potential for substantial benefits from summary action, decisions affecting deportation should be based upon deliberate and thorough consideration in view of the nature of the issue presented and the importance of the interests at stake.

The purpose of section 1282(b) is palliative, not punitive. Its object is to provide a specific remedy for a particular problem, not to deprive alien crewmen of rights available to others simply to punish them. If an alien crewman is denied the benefits of section 1252 though the exigency justifying summary deportation has passed,

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[14] The implementing regulation permits deportation other than on the vessel on which the crewman arrived only upon the written request of the master of the crewman's vessel. 8 C.F.R. § 252.2.

great loss is inflicted on the crewman without purpose. This is so even though he concedes his deportability, as do the overwhelming majority of persons involved in section 1252 proceedings.[15]

Although the benefits of suspension of deportation by 8 U.S.C. § 1254(f) (1964) and adjustment of status by 8 U.S.C. § 1255(a) (1964) in section 1252 proceedings are denied alien crewmen, they may be permitted to depart voluntarily to a country of their choice under section 1252 (b), and, perhaps, also under section 1254(d). *Matter of Vara-Rodriguez*, 10 I.&N. 113 (1962).

Moreover, if an alien crewman is finally ordered deported in a section 1252 proceeding, "his deportation will in the first instance be directed pursuant to section 243 (a) of the Act [8 U.S.C. § 1253(a)] to the country designated by him." 8 C.F.R. § 242.17(c). If that country will not accept him, and he is to be deported to another country selected in accordance with section 1253(a), he may apply for temporary withholding of deportation to the latter country under section 1253(h) on the ground that in that country he would be subject to persecution on account of race, religion, or political opinion.[16] His claim is considered by a special inquiry officer—an official having special competence and relatively independent status—in a proceeding carefully designed to guarantee a hearing that is both full and fair, followed by a decision subject to administrative as well as judicial review.[17]

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[15] Foti v. Immigration & Naturalization Service, 375 U.S. 217, 227 n.13 (1963).

[16] Section 1253(h) applies to "any alien within the United States." We have stated our reasons for concluding that alien crewmen who have landed under § 1282(b) permits are within this description. See text at notes 4-6.

Subsections (c) and (d) of § 1253 contain express references to alien crewmen granted "conditional permit[s] to land temporarily" under § 1282(a).

[17] Nothing we have said is intended to suggest that § 1252(b) proceedings are required when an alien crewman makes a claim of possible persecution in circumstances where § 1282(b) does apply. See Kordic v. Esperdy, 386 F.2d 232, 238 (2d Cir. 1967); Glavic v. Beechie, 340 F.2d 91 (5th Cir. 1964), affirming 225 F.Supp. 24 (S.D.Texas 1963). *Cf.* Dolenz v. Shaughnessy, 200 F.2d 288, 288-89 (2d Cir. 1952); 1 Gordon & Rosenfield, Immigration Law & Procedure § 5.166 [*sic:* should read "§ 5.16b"] at 5-127 (1967).

For these reasons we hold that the order of the District Director entered after the departure of appellant's vessel was not authorized by section 1282(b), and that appellant may be deported only in accordance with sections 1251 and 1252 of the Act.

Since the standard applied in any proceedings that may hereafter be had upon an application by appellant under section 1253(h) of the Act will necessarily be that provided by the statute as it now reads, we need not consider whether or not the District Director applied that standard in past proceedings.

The government expresses concern that the interpretation we place upon section 1282(b), plus the availability of judicial review of summary decisions revoking landing permits and ordering the removal of crewmen, will render section 1282(b) useless for any purpose even when properly invoked while a crewman's vessel is still in port. But as the district court demonstrated in this case, no great delay need be involved in the disposition of applications for relief,[18] and stays are not automatic either in the trial court or here. If the challenge to a section 1282(b) order is not substantial, enforcement of the order need not be substantially delayed. If the order appears to violate constitutional or statutory limitations, delay is obviously justified.

Reversed and remanded.

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[18] Appellant's complaint was filed on the day the District Director's order was entered. The district court issued an order to show cause on the same day, returnable the following morning. The hearing was held as noticed, and an order denying relief was entered in the course of the same day.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 21,272

VELJKO STANISIC, APPELLANT

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, ETC., APPELLEES

APPEAL from the United States District Court for the Western District of Washington, Northern Division [*].

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington, Northern Division [*], and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and that this cause be and hereby is remanded to the said District Court.

Filed and entered April 17, 1968.

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* So in original. Should read "District of Oregon".

SUPREME COURT OF THE UNITED STATES

No. 297, October Term, 1968

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

VELJKO STANISIC

ORDER ALLOWING CERTIORARI—Filed October 21, 1968.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

No. 297, October Term, 1968

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

VELJKO STANISIC

ON CONSIDERATION of the motion of the respondent for leave to proceed in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 21, 1968

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. _____

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

VELJKO STANISIC

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the Immigration and Naturalization Service, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered on April 17, 1968.

OPINION BELOW

The opinion of the court of appeals (Appendix, *infra*, pp. 13–30) is reported at 393 F. 2d 589.

JURISDICTION

The judgment of the court of appeals (Appendix, *infra*, p. 30) was entered on April 17, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, when the procedures specified in Section 252(b) of the Immigration and Nationality Act for the summary revocation of a conditional landing permit issued to an alien crewman and for his summary deportation are initiated while his ship is still in a United States port, the government must nevertheless abandon these proceedings once his ship has departed from the United States and must instead institute ordinary deportation proceedings.

STATUTE INVOLVED

Section 252 of the Immigration and Nationality Act, 66 Stat. 220 (8 U.S.C. 1282), provides in pertinent part:

> SEC. 252. (a) No alien crewman shall be permitted to land temporarily in the United States except as provided in this section * * *. If an immigration officer finds upon examination that an alien crewman is a nonimmigrant * * * and is otherwise admissible and has agreed to accept such permit, he may, in his discretion, grant the crewman a conditional permit to land temporarily pursuant to regulations prescribed by the Attorney General, subject to revocation in subsequent proceedings as provided in subsection (b), for a period of time, in any event, not to exceed—
>
> (1) the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or
>
> (2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to

depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived.

(b) Pursuant to regulations prescribed by the Attorney General, any immigration officer may, in his discretion, if he determines that an alien is not a bona fide crewman, or does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a)(1), take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States. Until such alien is so deported, any expenses of his detention shall be borne by such transportation company. Nothing in this section shall be construed to require the procedure prescribed in section 242 of this Act to cases falling within the provision of this subsection.

* * * * *

STATEMENT

Veljko Stanisic, respondent herein and a native and citizen of Yugoslavia, arrived at Coos Bay, Oregon, on December 23, 1964, as a member of the crew of the Yugoslav merchant vessel *M/V Sumadija*. Pursuant to Section 252(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1282(a)(1), *supra*, p. 2), he was issued a conditional landing permit authorizing him

to go ashore while his ship was in port (but in no event, for longer than 29 days). On January 6, after several visits ashore, respondent appeared at the Portland, Oregon, office of the District Director of Immigration and Naturalization and stated that he wished to remain in the United States because he feared political persecution if he returned to Yugoslavia. The interviewing immigration officer thereupon advised respondent that because it appeared that he did not intend to depart on the vessel on which he had arrived his conditional landing permit would be revoked and he would be detained for deportation on his vessel, under Section 252(b) of the Act (8 U.S.C. 1282(b), *supra,* p. 3).

On the following day (January 7, 1965), respondent requested a hearing on the issue of deportability and asylum under Section 243(h) of the Act (8 U.S.C. 1253(h)), on the ground that, if returned to Yugoslavia, he would be persecuted for his political opinions. On that same day, the immigration officer assigned to interview respondent attempted to obtain a statement from him regarding the grounds for the claim of asylum, but on the advice of counsel, respondent declined to submit any evidence. The next day (January 8, 1965), the District Director, treating the application as one for parole under the regulations of the Immigration and Naturalization Service (now 8 C.F.R. 253.1(f)),[1] denied relief and ordered respondent returned to his ship.

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[1] Under this regulation, an alien crewman whose conditional landing permit has been revoked, and who claims that he cannot return to a Communist-occupied country because of fear of

Before he could be returned to his vessel, respondent filed suit in the United States District Court for the District of Oregon seeking injunctive relief and review of the order of the District Director. He claimed that he was entitled to have the issue of persecution heard and determined by a special inquiry officer, at a formal hearing of the sort conducted by such officers in deportation proceedings under Section 242(b) of the Act (8 U.S.C. 1252(b)). On January 18, 1965, the district court denied the request for a Section 242(b) hearing, but stayed the administrative proceedings and remanded the case to the District Director for the purpose of holding an evidentiary hearing on the claim of persecution, under the Service's regulations. In the meantime, the vessel upon which respondent had arrived in the United States departed from Los Angeles, bound for Italy.

On January 19 and 20, 1965, the Deputy District Director for Oregon conducted an evidentiary hearing at which respondent made a statement and called witnesses on the persecution issue. The District Director, on January 25, 1965, found that respondent had failed to prove his claim of physical persecution. The district court, which had retained jurisdiction, sustained the administrative action and dissolved the stay order. *Vucinic* v. *United States Immigration and Naturalization Service,* 243 F. Supp. 113 (D. Ore.).

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persecution on account of race, religion, or political opinion, may be temporarily "paroled" into the United States for such time and on such conditions as may be fixed by the district director having jurisdiction over the area where the crewman is located.

Respondent did not appeal from that order but instead petitioned Congress (in July 1965) for a private bill to permit him to remain in the United States. On June 20, 1966, the Immigration and Naturalization Service notified him that his private bill had been adversely acted upon and ordered him to appear on June 24, 1966, for deportation to Yugoslavia. Respondent then sought a stay of deportation in order to litigate his claim of persecution (8 U.S.C. 1253(h)), and insisted that a new hearing on this question comply with the plenary deportation procedures set forth in Section 242(b) of the Act, 8 U.S.C. 1252(b). This petition was denied on June 23, 1966.

On that same day, respondent began the present proceedings by filing a complaint in the district court alleging that he was entitled to a Section 242(b) hearing before a special inquiry officer. On June 24, 1966, the district court entered judgment against petitioner on the pleadings.

The court of appeals reversed and remanded. It ruled that, since the District Director's order of June 23, 1966, denying respondent's application for relief from summary deportation, was entered after the ship upon which he had arrived had departed from the United States, summary deportation under Section 252(b), 8 U.S.C. 1282(b), was no longer authorized by the statute. Accordingly, it held that respondent was entitled to have his claims determined in accordance with the formal deportation procedures of Section 242(b). The court found that Congress intended the summary procedures of Section 252(b) to be applicable only where those procedures could return

"the crewman to his own vessel, with an exception for practical exigencies which goes no farther than to permit prompt deportation on another vessel arranged before the departure of the vessel on which the alien was a crewman." (Appendix, *infra*, p. 22.)

REASONS FOR GRANTING THE WRIT

The court below has held that the summary procedures authorized by Section 252(b) for deporting alien crewmen granted shore leave under Section 252 (a)(1) can no longer apply to a proceeding which, though begun while the crewman's ship was in a United States port, continues after the ship has left. This decision, which will, unless reversed, have a substantial impact on the administration of the immigration laws, defeats the manifest intent of Congress on this question and conflicts with the decisions of other circuits.

1. That the decision below is contrary to the intent of Congress is evident from the face of Section 252. After establishing a mechanism whereby alien crewmen may be allowed off their ships while in port, Congress specified that an alien landing in this country under a permit requiring him to depart on the same ship would be covered by special summary procedures not applicable to other alien entrants. These procedures do not contemplate full hearings, and Congress has underscored this intention by providing expressly that "nothing in this section shall be construed to require the procedure prescribed in section 242 of this Act [the general deportation section] to cases

falling within the provisions of this subsection" (Section 252(b)).

2. The decision is also in direct conflict with the interpretation placed on Section 252 by the Second Circuit in *Kordic* v. *Esperdy,* 386 F. 2d 232, certiorari denied on June 17, 1968 (No. 1283 Misc. O.T. 1967). The Second Circuit in *Kordic* concluded, correctly in our view, that, so long as the alien crewman's ship was in a United States port when his conditional landing permit issued under Section 252(a)(1) was revoked, the summary deportation procedures of Section 252(b) remain applicable even if the vessel has departed the United States prior to the completion of the administrative process. In accord is *Glavic* v. *Beechie,* 340 F. 2d 91 (C.A. 5), affirming 225 F. Supp. 24 (S.D. Tex.). The court below expressly disagreed with the Second Circuit's holding in *Kordic,* which this court has since declined to review (Appendix, *infra,* p. 18, n. 3).

3. The correct interpretation of Section 252 involves an important issue in the administration of the immigration laws. The question of how to deal with alien crewmen had long been a troublesome one because of the conflicting considerations underlying the problem. On the one hand, the traditional privilege of shore leave is necessary to international trade and comity; on the other, shore leave had become an easy avenue for unlawful entry into the United States. See 1 Gordon and Rosenfield, *Immigration Law and Procedure* §§ 6.1–6.4d (1967 rev. ed.).

It is the congressional plan for accommodating these competing interests that is now contained in

Section 252. This Section furnishes a procedure whereby shore leave may be granted to an alien crewman, while the danger of illegal entry is minimized by imposing strict limitations on the terms and conditions of entry. This compromise includes provision for summary deportation proceedings against those alien seamen who attempt to use conditional landing permits as a device to jump ship and remain in this country indefinitely. Under the statutory system, crewmen who are granted conditional shore leave under Section 252(a)(1) are required to agree that violation of the conditions of their entry authorizes summary deportation under Section 252(b).[2]

The decision of the court below has upset this accommodation. By holding that summary deportation procedures are available only when the alien can be returned to the ship upon which he arrived in this country, or on another vessel where arrangements are made for such deportation while his own ship is still in port, the Ninth Circuit has adopted an unrealistic construction of the statute which places a premium on dilatory tactics. The stay of foreign vessels in United States ports is variable; there is no authority to delay their departure until the completion of administrative procedures commenced during the time that they remain in an American port. And contrary to the assertion by the court below (Appendix, *infra*, pp. 29–30), it is not at all difficult for an alien seamen, whose conditional

[2] This permit provides: "By accepting this conditional permit to land the holder agrees to all the conditions incident to the issuance thereof, and to deportation from the United States in accordance with the provisions of section 252(b) [8 U.S.C. 1282(b)] of the Immigration and Nationality Act."

landing permit has been revoked while his ship is still in a United States port, to prolong the administrative process until after his vessel has departed. Indeed, in both *Kordic* (see Brief in Opp., No. 1283 Misc., O.T. 1967, pp. 3–4) and the instant case (see Statement, *supra*, pp. 3–6), the alien crewmen were able, by resort to a variety of administrative and judicial proceedings, to achieve this very result. In short, if the decision below is allowed to stand, the immediate and predictable consequence will be to render useless the procedure carefully worked out by Congress in Section 252(b) of the Immigration and Nationality Act.

Moreover, this problem is of significant and continuing concern. In calendar year 1967, the Immigration and Naturalization Service revoked 590 conditional landing permits of the kind issued to respondent; in the first quarter of 1968, there were 125 such revocations; and there is no reason to suppose that there will be any reduction in the number of violations in the years ahead. Thus, both petitioner, in discharging its administrative responsibilites, and the vast numbers of alien crewmen who receive conditional landing permits, have an interest in authoritative determination of the scope of summary deportation contemplated by Congress.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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JULY 1968.

APPENDIX

United States Court of Appeals for the Ninth Circuit

No. 21,272

VELJKO STANISIC, APPELLANT

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, ETC., APPELLEES

[April 17, 1968]

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

Before BROWNING, DUNIWAY, and ELY, Circuit Judges

BROWNING, *Circuit Judge:* Appellant Stanisic, a national of Yugoslavia, arrived in Coos Bay, Oregon, as a crewman aboard the *M-V Sumadija,* a Yugoslavian vessel. He was issued a short leave permit, authorizing him to go ashore while his ship was in port, by a United States immigration officer pursuant to 8 U.S.C. § 1282(a)(1) (1964) and 8 C.F.R. § 252.1 (d)(1).

Three days later, after several visits ashore, appellant presented himself at the office of the District Director of the Immigration and Naturalization Service at Portland, Oregon, and requested asylum. His landing permit was immediately revoked under the authority of subsection (b) of section 1282, which provides that "any immigration officer may, in his discretion,

if he determines that an alien * * * does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a)(1) of this section, take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States. * * * Nothing in this section shall be construed to require the procedure prescribed in section 1252 of this title to cases falling within the provisions of this subsection."

On the following day appellant was offered an opportunity to make a showing before the District Director in support of his claim for asylum under 8 C.F.R. § 253.1(e), which provides that an alien crewman whose "conditional landing permit issued under § 252(d)(1) of this chapter is revoked who alleges that he cannot return to a Communist * * * country because of fear of persecution in that country on account of race, religion, or political opinion may be paroled into the United States under the provisions of section 212(d)(5) of the Act [8 U.S.C. § 1182 (d)(5)] * * *."

Appellant's counsel refused the offer, contending that appellant was entitled to have his claim considered, not as an application for parole under the regulation, but rather as a petition for stay of deportation under 8 U.S.C. § 1253(h)(1964), which (as it then read) authorized the Attorney General to withhold deportation "of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution * * *." Appellant's

counsel contended that the claim should be heard in accordance with the procedures established by 8 U.S.C. § 1252(b) (1964), which included a hearing before a Special Inquiry Officer with a full array of procedural protections, followed by administrative review.

The District Director denied appellant's claim for asylum for want of a supporting showing, and ordered that appellant be returned to his ship. Appellant's counsel filed suit in the court below seeking review of the District Director's order and injunctive relief.

The district court held that appellant was not entitled to a section 1252(b) hearing because of the express provision of section 1282(b), quoted above, that "Nothing in this section shall be construed to require the procedure prescribed in section 1252 of this title to cases falling within the provisions of this subsection." However, the court stayed the District Director's order and referred the matter back to the District Director with instructions to hold a hearing under 8 C.F.R. § 253.1(e).

Appellant offered evidence in support of his claim before a delegatee of the District Director. On the basis of the record made, the District Director concluded that the facts "do not establish that applicant has shown that he would be physically persecuted if he were to return to Yugoslavia," and denied relief. The district court, which had retained jurisdiction, sustained the administrative action, and dissolved the stay order. *Stanisic* v. *Immigration & Naturalization Service,* 243 F. Supp. 113 (D. Ore. 1965).

Appellant did not appeal, but instead unsuccessfully petitioned Congress for a private bill. When a District Director thereafter ordered appellant to appear for removal, appellant submitted a renewed application for stay of deportation under section 1253(h), point-

ing out that subsequent to the hearing by the District Director on appellant's prior application, the statute had been amended to remove the limitation of relief to cases involving "physical" persecution. Appellant requested a full section 1252(b) hearing under the revised standard. He also sought permission to depart voluntarily at his own expense if his petition were rejected.

The District Director denied the new application without a hearing. He stated that the first hearing had been held under the regulation, rather than the statute, and that the regulation had always read as the statute was later amended to read. He reiterated his position that appellant was not entitled to section 1252(b) procedures, and relied upon the earlier district court decision approving this view. He rejected appellant's request for voluntary departure on the ground that under section 1282(b) appellant "is to be placed in the custody of the steamship company which brought him to the United States and his deportation from the United States is to be effected by the steamship company." The District Director therefore denied appellant's petition in its entirety and ordered appellant to appear for removal three days later.

Appellant filed a complaint in the district court, challenging the District Director's decision and praying for a restraining order on various grounds which, so far as necessary to our decision, are stated below. Appellees answered. The district court entered judgment on the pleadings, denying appellant any relief. This appeal followed.

Both sides support the jurisdiction of the district court to enter the judgment appealed from.

Since the order of the District Director was not entered in a section 1252(b) proceeding, it is not

within the purview of 8 U.S.C. § 1105a(a) (1964), which vests exclusive jurisdiction to review section 1252(b) orders in the Courts of Appeals. *Yamada* v. *Immigration & Naturalization Service,* 384 F. 2d 214 (9th Cir. 1967).

Since the order was not one made under the provisions of 8 U.S.C. § 1226 (1964), appellant's remedy in the district court was not limited to habeas corpus by 8 U.S.C. § 1105a(b) (1964). We see no reason why the order could not be review by the district court under the Administrative Procedure Act, 5 U.S.C. § 1009 (1964)—as that court held in entertaining appellant's first complaint. 243 F. Supp. at 115–16. But even if habeas corpus were the exclusive remedy, it would be available to appellant, for he was, and now is, subject to a parole of the District Director. *Jones* v. *Cunningham,* 371 U.S. 236, 243 (1963).

The district court therefore had jurisdiction review the District Director's order.

Appellees urge us to hold that the question of whether appellant was entitled to the deportation procedures of section 1252(b) was decided against him by the district court in appellant's first action, and since the judgment in that action has become final the issue is not open to reexamination.

Appellant points out that the ship upon which he arrived and on which he was to depart was still in port when the District Director entered the order reviewed in the first action, but that it had departed long before the District Director entered the order attacked in the second action.[1] He contends that this factual difference raises a wholly different legal issue,

[1] The record does not disclose the vessel's exact sailing date, However, the District Director's second order was entered more than 18 months after the entry of his first order.

rendering the second order erroneous, even assuming the correctness of the first.[2]

We agree. We conclude that subsection (b) of section 1282 authorized appellant's summary deportation aboard the vessel on which he arrived or, within a very limited time after that vessel's departure, aboard another vessel pursuant to arrangements made before appellant's vessel departed.[3] We further conclude that since section 1282(b) did not authorize summary deportation of appellant in the circumstances existing when the District Director entered the order under review, appellant could be deported

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[2] The issue which appellant raises here, and the only issue with which we deal, is one of statutory construction. We are not concerned with the constitutionality of the summary deportation proceedings authorized by § 1282(b).

It is suggested in *Kordic* v. *Esperdy*, 386 F. 2d 232, 236–37 (2d Cir. 1967), quoting from *Stellas* v. *Esperdy*, 366 F. 2d 266, 269 (2d Cir. 1966), *vacated* 388 U.S. 462 (1967), that "any Constitutional right to full-scale deportation proceedings" is "waived" by acceptance of a landing permit in view of the following provision imprinted on the permit form:

> By accepting this conditional permit to land the holder agrees to all the conditions incident to the issuance thereof, and to deportation from the United States in accordance with the provisions of section 252(b) [8 U.S.C. § 1282(b)] of the Immigration and Nationality Act.

The question before us is the meaning of the phrase "deportation from the United States in accordance with the provisions of section 252(b) of the Immigration and Nationality Act." Obviously appellant has not agreed to any procedures which § 252(b) does not authorize.

[3] We therefore do not agree with the holding of the Court of Appeals for the Second Circuit in *Kordic* v. *Esperdy*, 386 F. 2d 232, 237–38 (1967), that if an alien crewman's permit is revoked before the vessel on which he arrived and on which he was to leave departs he is deportable under § 1282(b) at any time thereafter, apparently without regard to the departure of his vessel or how long a period may have elapsed.

only in accordance with sections 1251 and 1252 of the Act.

We turn first to the premise that the general provisions regarding deportation found in sections 1251 and 1252 of the Act apply to alien crewmen who have been permitted to land for shore leave, except as section 1282(b) precludes their application.

Section 1251(a) states that "any alien in the United States (including an alien crewman)" shall be deported if he falls within one of the categories described in that section. Section 1252(b) outlines the procedures "to determine the deportability of any alien." Thus the language of sections 1251 and 1252 is broad enough to include alien crewmen who have landed under section 1282(a) permits if such crewmen are "in the United States," as that phrase is used in section 1251, and are not merely "on the threshold of initial entry," as are persons paroled into the United States under section 1182(d)(5). *Shaughnessy* v. *Mezei*, 345 U.S. 206, 212 (1953). See also *Leng May Ma* v. *Barber*, 357 U.S. 185 (1958); *Lam Hai Chewng* v. *Esperdy*, 345 F. 2d 989, 990 (2d Cir. 1965).

Congress apparently thought alien crewmen landing under section 1282(a) permits would be within the reach of the general deportation sections; otherwise the provision in section 1282(b) expressly excluding section 1252 coverage would have been wholly unnecessary.

The same conclusion as to the congressional understanding is suggested by other elements in the structure of section 1282.

To obtain a landing permit under section 1282(a) an alien crewman "must establish to the satisfaction of the immigrant inspector that he is eligible to enter the United States * * * ." Besterman, Commentary on the Immigration and Nationality Act, 8 U.S.C.A. 1,

39 (1953). He "must have in his possession a valid passport and a visa issued by an American consul" and "must be eligible to enter the United States under the general eligibility rules." *Ibid.*; 8 C.F.R. § 252.1 (c).[4]

Section 1282(a) contemplates issuance of landing permits both to crewmen who intend to depart on the vessel on which they arrived and to crewmen who intend to depart on a different vessel.[5] However, the summary procedures of section 1282(b) apply only to those crewmen who were to depart on the vessel on which they arrived. Crewmen who were to depart on a different vessel are to be deported in accordance with sections 1251 and 1252 (*Kordic* v. *Esperdy,* 386 F. 2d 232, 237 n. 5 (2d Cir. 1967)); and thus, admittedly, are treated as "in the United States." There is nothing in the language of section 1282 suggesting that some crewmen who land under section 1282(a) conditional landing permits are "in the United States" but that others are not.

Historically, seamen on shore leave have been treated as having "entered" this country for purposes of the immigration laws (see, *e.g., Claussen* v. *Day,* 279 U.S. 398, 401 (1929); *Stapt* v. *Corsi,* 287 U.S. 129 (1932)), and as being subject to deportation in accordance with the general provisions of those laws as persons unlawfully in the United States. *Colovis* v. *Watkins,* 170 F. 2d 998, 1000 n. 1 (2d Cir. 1948); Senate Report 1515, 81st Cong., 2d Sess. 547 (1950). The authorization of conditional landing permits by

[4] Stowaways are among the classes of aliens "excluded from admission into the United States," but alien crewmen are not. 8 U.S.C. § 1182(a)(18) (1964).

[5] Landing permits issued to the former are referred to as "D–1" permits and to the latter as "D–2" permits, from the designation of the applicable subparagraphs of the regulations. See 8 C.F.R. § 252.1(d)(1) and (d)(2).

section 1282(a) did not change the status of crewmen on shore leave. Since the conditional landing permit was an administrative invention found in pre-1952 regulations, it was necessarily considered to be consistent with the pre-1952 law. House Report 1365, 82d Cong., 2d Sess. (1952), 2 U.S. Cong. & Admin. News 1722. The innovation in the 1952 Act was not the conditional landing permit, but the provision for summary revocation and deportation. 1 Gordon & Rosenfield, Immigration Law and Procedure § 6.3a (1967).

Finally, the premise that alien crewmen landed under section 1282(a) permits are deportable on grounds stated in section 1251 in accordance with section 1252 procedures, except only as section 1282(b) provides to the contrary, is supported by holdings, commentary, and practice applying sections 1251 and 1252 to such seamen whenever their cases, for one reason or another, do not fit into the very narrow limits within which summary proceedings are authorized by section 1282(b).[6]

We turn, then, to the question of the reach of the section 1282(b) exception to the general provisions of sections 1251 and 1252.

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[6] Matter of M, 5 I.N. 127 (1953); see also *Kordic* v. *Esperdy*, 386 F. 2d 232, 237 n. 5 (2d Cir. 1967); 1 Gordon & Rosenfield, Immigration Law & Procedure § 6.3a (1967). The practice referred to is reflected in a multitude of cases, *e.g.*, *Foti* v. *Immigration & Naturalization Service*, 375 U.S. 217 (1963); *Cheng Kai Fu* v. *Immigration & Naturalization Service*, 386 F. 2d 750 (2d Cir. 1967); *Sovich* v. *Esperdy*, 319 F. 2d 21 (2d Cir. 1963); *Blagaic* v. *Flagg*, 304 F. 2d 623 (7th Cir. 1962); *Milutin* v. *Bouchard*, 209 F. 2d 50 (3d Cir. 1962); vacated on other grounds 370 U.S. 292 (1962); *Dunat* v. *Hurney*, 297 F. 2d 744 (3d Cir. 1962); *Gouto* v. *Shaughnessy*, 218 F. 2d 758 (2d Cir. 1955); *Dolenz* v. *Shaughnessy*, 200 F. 2d 288 (2d Cir. 1952); *Matter of P*, 9 I.N. 368 (1961); *Matter of A*, 9 I.N. 356 (1961).

The section 1282(b) exception is very narrowly drawn. It does not apply to the deportation of crewmen who have "jumped ship" and entered the United States illegally, with no permit at all. As noted above, it does not apply to crewmen issued landing permits authorizing them to depart on vessels other than those on which they arrived. It does not apply to crewmen who have overstayed the twenty-nine day leave period without revocation of their landing permits. It does not apply to crewmen who were to leave on the vessel on which they arrived if their vessels have departed before their landing permits are revoked. In all of these situations crewmen may be deported only in accordance with section 1252(b) procedures.[7]

The purpose and language of section 1282(b) and the content of closely related sections of the Act, particularly when considered in light of the deliberate narrowness of the section 1282(b) exception, strongly suggest that summary deportation is authorized only if it can be accomplished by returning the crewman to his own vessel, with an exception for practical exigencies which goes no farther than to permit prompt deportation on another vessel arranged before the departure of the vessel on which the alien was a crewman.

Congress' purpose was to secure prompt removal of alien crewmen in order to close a "loophole" through which large numbers of alien crewmen had in the past "become lost in the general populace of the country," establishing relationships and statuses which made subsequent deportation difficult.[8] The means adopted was that of summarily revoking alien crewmen's landing permits and returning the alien

[7] See note 6.

[8] Senate Report 1515, 80th Cong., 2d Sess., 550–51 (1950). Joint Hearings before the Subcommittees of the Committees of the Judiciary on S. 716, H.R. 2379, and H.R. 2816, 82d Cong., 1st Sess., 156–60 (1951).

crewmen to the vessels which brought them. Summary revocation and removal of alien crewmen without hearing or appeal was thought to be necessary if the alien crewmen were to be returned to their vessels without unduly delaying international commerce.[9] No other possible justification for this "extraordinary procedure"[10] was suggested.

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[9] Alfred U. Krebs, Counsel of the National Federation of American Shipping, Inc., testifying at Joint Hearings before the Subcommittees of the Committees on the Judiciary on S. 716, H.R. 2379, and H.R. 2816, 81st Cong., 1st Sess., objected to § 1282(b) on the ground that the transportation company would be charged with the expense of deporting an alien crewman on the basis of an immigration officer's summary determination that the crewman did not intend to depart with his vessel. Mr. Krebs stated, "It seems to us that there should be some procedure set up for a hearing, or something in that connection." *Id.* at 156; and further, "we do find fault with the fact that it is in the mind of the immigration officer as to what the intentions of that crewman are, without any hearing or any procedure being set up, or any evidence being introduced, to show that this man does not intend to return. That is the thing that we object to about it." *Ibid.*

In the course of the subsequent colloquy between Mr. Krebs and Richard Arens, Staff Director of the Senate Subcommittee, the following appears:

> Mr. ARENS. If they had a hearing, Mr. Krebs, the probabilities are that the ship would have departed before the hearings were over, would it not?
>
> Mr. KREBS. That is possible.
>
> Mr. ARENS. And it is also possible that the 29 days itself would have expired before the hearing is concluded.
>
> Mr. KREBS. That is right. That is certainly possible.
>
> Mr. ARENS. So the net result of requiring the hearing before revocation of the permit to have a seaman land would be that you would not accomplish anything from the standpoint of getting your seaman out of the country.

Id. at 157. See also, House Report 1365, 82d Cong., 2d Sess. (1952), 2 U.S. Cong. & Admin. News 1722.

[10] 1 Gordon & Rosenfield, Immigration Law & Procedure § 6.3a at 6–23 (1967).

As we have seen, section 1282(b) distinguishes between alien crewmen who were to depart on the vessel on which they arrived and those who were to depart on a vessel other than that on which they arrived, and provides for summary deportation only of the former. The only conceivable explanation for this distinction is that the summary procedure was intended to be used to put the alien crewmen back on their ship and to require their ship to remove them, or, at least, to arrange for their prompt removal at the ship's expense.[11]

Subsection (b) of section 1282 makes this explicit by providing that when the crewman's landing permit has been summarily revoked, the immigration officer may "require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable,[12] and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States."

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[11] Thus the regulations limit issuance of permits to crewmen intending to depart on a vessel other than that on which they arrived to situations in which "the immigration officer has consented to the pay off or discharge of the crewman from the vessel on which he arrived" (8 C.F.R. § 252.1(d)(2)) when, presumably, there is no longer any relationship between the crewman and the vessel on which he arrived which would justify imposing the duty or expense of his removal upon the vessel.

[12] Later provisions of the statute indicate that the qualification "if practicable" refers to a condition affecting a particular crewman or vessel which renders immediate detention aboard unfeasible, such as illness of the crewman or movement of the vessel to another port of the United States, but not to the departure of the vessel for a foreign port.

The implementing regulations contemplate that a permittee may arrange with the master of his vessel to rejoin his ship at

Section 1284 further implements the legislative scheme in which summary deportation is linked directly to presence of the crewman's vessel. Subsection (a) of section 1284 imposes a fine upon the owner, agent, consignee, charteree, master, or commanding officer of a vessel or aircraft who fails to deport an alien crewman if required to do so under section 1282, and provides that "No such vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid," unless a bond is posted for payment. Subsection (b) of section 1284 provides that "proof that an alien crewman did not appear upon the outgoing manifest of the vessel or aircraft on which he arrived * * * shall be prima facie evidence of a failure to * * * deport such alien crewman."

Subsection (c) of section 1284 is quoted in full in the margin.[13] Although the first sentence recognizes

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another port in the United States at which it will call before departing for a foreign port. 8 C.F.R. § 252.1. The regulation governing summary deportation of those permittees therefore provides that such a crewman may be taken into custody and "transferred to the vessel upon which he arrived in the United States, if such vessel is in any port of the United States and has not been in a foreign port or place since the crewman was issued his condition [sic] landing permit." 8 C.F.R. § 252.2.

[13] Subsection (c) of § 1284 provides:

> If the Attorney General finds that deportation of an alien crewman under this section on the vessel or aircraft on which he arrived is impracticable or impossible, or would cause undue hardship to such alien crewman, he may cause the alien crewman to be deported from the port of arrival or any other port on another vessel or aircraft of the same transportation line, unless the Attorney General finds this to be impracticable. All expenses incurred in connection with such deportation, including expenses incurred in transferring an alien crewman from one place in the United States to another under such conditions and safe-

that removal of a crewman following summary revocation of his landing permit may be accomplished on a vessel other than one upon which the crewman arrived, the only alternative authorized is deportation "on another vessel or aircraft of the same transportation line," if this be practicable. The Attorney General is not given general authority to deport the alien crewman by any available means. More significantly, the section contemplates that the alternative arrangement shall be made while the vessel upon which the crewman arrived is still in port—his ship is not to be cleared for departure until the expenses incident to the alternative arrangement have been paid or guaranteed.[14]

The accepted construction of section 1282(b), as we have noted, is that its provisions may not be invoked

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guards as the Attorney General shall impose, shall be paid by the owner or owners of the vessel or aircraft on which the alien arrived in the United States. The vessel or aircraft on which the alien arrived shall not be granted clearance until such expenses have been paid or their payment guaranteed to the satisfaction of the Attorney General. An alien crewman who is transferred within the United States in accordance with this subsection shall not be regarded as having been landed in the United States.

The concluding sentence of § 1284(c) does not apply to an alien crewman admitted on a landing permit. Its presence is explained by the fact that, as stated in § 1284(a), this section applies not only to alien crewmen permitted to land for shore leave but also to those who are being detained prior to entry pending examination by an immigration officer, to alien crewmen who have been inspected but have not been granted a landing permit, to alien crewmen who have been paroled into the United States under 8 U.S.C. § 1182(a)(5) which "shall not be regarded as an admission of the alien," and to alien crewmen who are hospitalized on arrival as provided in § 1283 for treatment of one of the diseases listed in § 1285 "including an alien crewman ineligible for a conditional permit under section 1282(a)."

if the attempt to deport a crewman is begun after his ship has sailed, for as the court said in *Kordic v. Esperdy*, 386 F. 2d 232, 237 (2d Cir. 1967), "the justification for quick resolution of the problem departs with the vessel." See also *Martinez-Angosto v. Mason*, 344 F. 2d 673, 685 (2d Cir. 1965); *Matter of M*, 5 I.&N. 127 (1953).

This much being conceded, it is difficult to see why the result should be different when section 1282(b) proceedings are begun, but not completed, before the vessel departs. Whenever the statutory scheme for utilizing the availability of an alien crewman's vessel to effect his speedy deportation is frustrated, the justification for quick resolution of the crewman's status is gone. What reason remains for not then affording the crewman the benefits of section 1252?

Although the time and effort which have already been invested in the aborted administrative process would be lost, summary deportation is not authorized simply as a device for saving administrative time, and, in any event, the time and effort invested in summary proceedings is, by definition, minimal. The careful provisions of section 1252 and the narrow scope of the section 1282(b) exception reflect a legislative judgment that, in the absence of exigent circumstances and a potential for substantial benefits from summary action, decisions affecting deportation should be based upon deliberate and thorough consideration in view of the nature of the issue presented and the importance of the interests at stake.

The purpose of section 1282(b) is palliative, not punitive. Its object is to provide a specific remedy for a particular problem, not to deprive alien crewmen of rights available to others simply to punish them. If an alien crewman is denied the benefits of section 1252 through the exigency justifying summary deportation

has passed, great loss is inflicted on the crewman without purpose. This is so even though he concedes his deportability, as do the overwhelming majority of persons involved in section 1252 proceedings.[15]

Although the benefits of suspension of deportation by 8 U.S.C. § 1254(f) (1964) and adjustment of status by 8 U.S.C. § 1255(a) (1964) in section 1252 proceedings are denied alien crewmen, they may be permitted to depart voluntarily to a country of their choice under section 1252(b), and, perhaps, also under section 1254(d). *Matter of Vara-Rodriguez*, 10 I.&N. 113 (1962).

Moreover, if an alien crewman is finally ordered deported in a section 1252 proceeding, "his deportation will in the first instance be directed pursuant to section 243(a) of the Act [8 U.S.C. § 1253(a)] to the country designated by him." 8 C.F.R. § 242.17(c). If that country will not accept him, and he is to be deported to another country selected in accordance with section 1253(a), he may apply for temporary withholding of deportation to the latter country under section 1253(h) on the ground that in that country he would be subject to persecution on account of race, religion, or political opinion.[16] His claim is considered by a special inquiry officer—an official having special competence and relatively independent status—in a proceeding carefully designed to guarantee a hearing

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[15] *Foti* v. *Immigration & Naturalization Service*, 375 U.S. 217, 227 n. 13 (1963).

[16] Section 1253(h) applies to "any alien within the United States." We have stated our reasons for concluding that alien crewmen who have landed under § 1282(b) permits are within this description. See text at notes 4–6.

Subsections (c) and (d) of § 1253 contain express references to alien crewmen granted "conditional permit[s] to land temporarily" under § 1282(a).

that is both full and fair, followed by a decision subject to administrative as well as judicial review.[17]

For these reasons we hold that the order of the District Director entered after the departure of appellant's vessel was not authorized by section 1282(b), and that appellant may be deported only in accordance with sections 1251 and 1252 of the Act.

Since the standard applied in any proceedings that may hereafter be had upon an application by appellant under section 1253(h) of the Act will necessarily be that provided by the statute as it now reads, we need not consider whether or not the District Director applied that standard in past proceedings.

The government expresses concern that the interpretation we place upon section 1282(b), plus the availability of judicial review of summary decisions revoking landing permits and ordering the removal of crewmen, will render section 1282(b) useless for any purpose even when properly invoked while a crewman's vessel is still in port. But as the district court demonstrated in this case, no great delay need be involved in the disposition of applications for relief,[18] and stays are not automatic either in the trial court or here. If the challenge to a section 1282(b) order is not substantial,

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[17] Nothing we have said is intended to suggest that § 1252(b) proceedings are required when an alien crewman makes a claim of possible persecution in circumstances where § 1282(b) does apply. See *Kordic* v. *Esperdy*, 386 F. 2d 232, 238 (2d Cir. 1967); *Glavic* v. *Beechie*, 340 F. 2d 91 (5th Cir. 1964), affirming 225 F. Supp. 24 (S.D. Texas 1963). *Cf. Dolenc* v. *Shaughnessy*, 200 F. 2d 288, 288–89 (2d Cir. 1952); 1 Gordon & Rosenfield, Immigration Law & Procedure § 5.166 at 5–127 (1967).

[18] Appellant's complaint was filed on the day the District Director's order was entered. The district court issued an order to show cause on the same day, returnable the following morning. The hearing was held as noticed, and an order denying relief was entered in the course of the same day.

enforcement of the order need not be substantially delayed. If the order appears to violate constitutional or statutory limitations, delay is obviously justified.

Reversed and remanded.

UNITED STATES COURT OF APPEALS

For the Ninth Circuit

No. 21272

VELJKO STANISIC, APPELLANT

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, ETC., APPELLEES

Appeal from the United States District Court for the Western District of Washington, Northern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington, Northern Division and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and that this cause be and hereby is remanded to the said District Court.

Filed and entered April 17, 1968.

U.S. GOVERNMENT PRINTING OFFICE: 1968

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OCTOBER TERM, 1968

No. 297

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER

v.

VELJKO STANISIC

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

OPINION BELOW

The opinion of the court of appeals (A. 61–75) is reported at 393 F. 2d 539.

JURISDICTION

The judgment of the court of appeals was entered on April 17, 1968 (A. 76). The petition for a writ of certiorari was filed on July 16, 1968, and was granted on October 21, 1968 (A. 77). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, when the procedures specified in Section 252(b) of the Immigration and Nationality Act for

the revocation of an alien crewman's conditional landing permit and for his deportation are initiated while his ship is still in a United States port, the government must abandon these proceedings once his ship has departed and must instead institute ordinary expulsion proceedings under Section 242 of the Act.

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of Sections 242(b), 243(h), 252, and 254 of the Immigration and Nationality Act, and of Sections 251.1, 251.2, and 253.1(e) of Title 8 of the Code of Federal Regulations are set forth in the Appendix, *infra*, pp. 39–46.

STATEMENT

Respondent, Veljko Stanisic, is a 33-year-old native and citizen of Yugoslavia who arrived at Coos Bay, Oregon, on or about December 23, 1964, as a member of the crew of the Yugoslav *M/V Sumadija* (A. 10).[1] He entered the United States under the authority of a conditional landing permit, issued pursuant to Section 252(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1282(a)(1), Appendix, *infra*, p. 41) authorizing him to go ashore while the ship was in port, but in no event for longer than 29 days (A. 5, 10, 62).[2] On January 4, 1965, following several landings under the permit, he went ashore for the

[1] Respondent was unmarried at the time (A. 10). The record does not reflect his present marital status.

[2] Such permits are known as "D–1" conditional landing permits from the paragraph number of the implementing regulation (8 C.F.R. 252.1(d)(1)).

last time (A. 10, 26, 62). On January 6, 1965, respondent appeared with a relative at the Portland, Oregon, office of the Immigration and Naturalization Service and informed an official that he wished to remain permanently in the United States because he would be subjected to persecution if he returned to his ship or to Yugoslavia (A. 5, 10). In the course of an interview, respondent expressly indicated that he would not return to his ship under any circumstances (A. 5). His conditional landing permit was thereupon revoked—pursuant to Section 252(b) of the Act (8 U.S.C. 1282(b), Appendix, *infra*, pp. 41–42)—and he was detained for removal to and deportation on his ship, which was still in port (A. 5, 7; see note 4, *infra*).

On the following day, January 7, 1965, the immigration authorities offered respondent an opportunity to make a sworn statement and to present evidence, under 8 C.F.R. 253.1(e) (Appendix, *infra*, p. 46), in support of his claim that he would be persecuted if he returned to Yugoslavia (A. 5). Under that regulation,[3] an alien crewman whose conditional landing permit has been revoked, and who claims that he cannot return to a Communist country because of fear of persecution on account of race, religion, or political opinion, may be temporarily paroled into the United States in the discretion of the District Director. Upon the advice of counsel, respondent refused to make a sworn statement or to offer any evidence, contending that he was entitled to have his claim considered, not

[3] It has since been redesignated 253.1(f) and amended in an immaterial detail (see p. 46 n. 3, *infra*).

as an application for parole under the regulation, but as a petition for a stay of deportation under Section 243(h) of the Act (8 U.S.C. 1253(h), Appendix; *infra*, p. 40) (A. 5–6, 62–63). That section—as it then read (see p. 6, *infra*)—authorized the Attorney General, in his discretion, to withhold the deportation of any alien within the United States to any country in which, in his opinion, the alien would be subject to "physical persecution." Respondent's counsel contended that the claim should be heard in accordance with the procedures prescribed by Section 242(b) of the Act (8 U.S.C. 1252(b), Appendix, *infra*, pp. 39–40), which include a hearing, with counsel, before a special inquiry officer (A. 63). On the same day, the District Director denied respondent's request for asylum for want of a supporting showing and ordered that he be returned to his ship for removal from the country pursuant to Section 252(b) (A. 5–6).

Respondent thereupon filed suit in the United States District Court for the District of Oregon to enjoin the District Director from deporting him (A. 3–4, 6–9). On January 18, 1965, the district court ruled that respondent was not entitled to a hearing before a special inquiry officer, but stayed the District Director's order, remanded the case to the immigration authorities to afford respondent a further opportunity to present evidence under 8 C.F.R. 253.1(e) in support of his plea for asylum, and retained jurisdiction (A. 9, 28, 63).

The District Director withdrew his prior order on the same day, pursuant to the district court's remand, and on January 19 and 20, the Deputy District Direc-

tor conducted an evidentiary hearing at which respondent testified and called witnesses (A. 10–18, 24, 28). On January 25, 1965, the District Director found that respondent had failed to prove his claim that he would be persecuted and denied the application for parole (A. 10–22). Respondent's ship had in the meantime sailed for a foreign port.[4]

On January 27, 1965, respondent, challenging the findings of the District Director, renewed his request for injunctive relief in the district court (A. 23–25). On July 20, 1965, the district court (East, D.J.) sustained the administrative action and dissolved the stay order (A. 26–34). The court found that the District Director's decision was fully supported by the

[4] The ship's sailing date does not appear from the record which was before the court of appeals. However, in an affidavit dated January 13, 1965, which the government filed in the district court on that date as an exhibit to a motion for summary judgment, the District Director attested that the ship had been at Coos Bay on January 6, when respondent's conditional landing permit was revoked; that it had thereafter proceeded coastwise; and that, according to the local agent for the vessel, it was scheduled to sail from Los Angeles, bound for Italy, on January 16. Through an apparent oversight, the motion for summary judgment and its attachment were not among the record papers certified by the clerk of the district court to the court of appeals. They were retained in the district court record in No. 65–9 Civil, *Vucinic* v. *Immigration and Naturalization Service*, a companion case to the present one, to which the materials were also pertinent. A copy of the District Director's affidavit (Exhibit 4 to the motion), together with a copy of a letter we have received from the clerk of the district court certifying the affidavit to be part of the district court record, is being lodged herewith.

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evidence and that there had been no abuse of discretion (A. 32). *Vucinic* [and *Stanisic*] v. *Immigration and Naturalization Service*, 243 F. Supp. 113, 117 (D. Ore.)

Respondent took no appeal from that order. Instead, in July 1965, he petitioned Congress for relief by private bill (A. 63). In accordance with its practice in such circumstances, the Service stayed the administrative proceedings. When the private bill was adversely acted upon, the Service, on June 21, 1966, directed respondent to appear for deportation (A. 39, 63). On June 22, respondent renewed his application for parole, again seeking a hearing before a special inquiry officer on his request for relief under Section 243(h) (A. 35–36). Respondent noted in his petition that, subsequent to the administrative hearing on his prior application, Section 243(h) had been amended to authorize a withholding of deportation whenever the consequence would be "persecution on account of race, religion, or political opinion", not only "*physical* persecution" as before (A. 35).[5]

On June 23, the District Director denied the new application without a hearing (A. 36–38). He noted that respondent's previous hearing had been held under the regulation, not the statute, and that the regulation had always read as the statute had been amended to read (A. 37).[6] He reiterated his position that respondent was not entitled to a hearing before a special inquiry officer and cited the earlier district court decision approving this view (A. 37–38).

[5] See Act of October 3, 1965, Section 11(f), 79 Stat. 918, amending Section 243(h) in the manner referred to.

[6] But see note 20, *infra*.

On the same day, June 23, 1966, respondent filed a complaint in the district court alleging that he was entitled to a Section 242(b) hearing before a special inquiry officer and requesting a restraining order (A. 38–42). An order to show cause was issued (A. 43–44) and a hearing was held, at which the Service relied on the court's earlier orders (A. 44). On June 24, 1966, the district court (Kilkenny, D.J.) entered judgment against respondent on the pleadings (A. 44–45).

On April 17, 1968, the court of appeals reversed (A. 61–76). It ruled that, because the District Director's order of June 23, 1966, denying respondent's application for relief from deportation, had been entered after respondent's ship had departed from the United States, expulsion under Section 252(b) was no longer authorized. Accordingly, the court held that respondent could not be deported except in accordance with the detailed administrative procedure of Section 242(b).

SUMMARY OF ARGUMENT

Section 252(b) of the Immigration and Nationality Act authorizes an immigration officer, if he determines that an alien crewman who has been granted shore leave on his promise to depart with his ship does not intend to do so, to revoke the crewman's conditional landing permit, take him into custody, and order the master of the vessel to receive and detain him on board "if practicable;" the crewman "shall be deported from the United States at the expense of the transportation line which brought him * * *." Section 252(b) expressly provides that "Nothing in

this section shall be construed to require the procedure prescribed in [Section 242 of the Act] to cases falling within the provisions of this subsection." The court below recognized that respondent's conditional landing permit was properly revoked under Section 252(b) and that he could have been lawfully deported if he had been removed to his ship. But the court held that since respondent's ship sailed during the pendency of administrative and judicial proceedings in respect of his claim that he would be persecuted if he returned to Yugoslavia, he could not be deported except pursuant to proceedings under Section 242.

Contrary to the rationale of the decision below, the fact that respondent was unable to be deported on his ship does not render the expulsion procedures prescribed in Section 252(b) inapplicable. Although the presence of the crewman's ship ordinarily may be expected to provide a prompt and convenient means of effecting his deportation, the provision authorizing the crewman's removal to his ship "if practicable" shows that Congress anticipated that it might not be feasible to deport the crewman on the vessel on which he arrived. Congress did not say or intimate that in the event the crewman could not be removed on his ship the Section 252(b) proceeding was to abort. The words reflect a determination by Congress to give flexibility to the Service with respect to the physical means of deporting the crewman, without encumbering the expulsion process with the full procedure required in other cases. Certainly a typical contingency in which it would not be "practicable" to deport the

crewmen on his own ship would be if the ship had sailed from our waters.

Section 254, which the court of appeals cited as supporting its construction of Section 252(b), provides further evidence of the discretion which Congress authorized in the selection of the method of deportation. Section 254(c) provides that if the Attorney General finds that deportation of a crewman on the vessel on which he arrived "is impracticable or impossible, or would cause undue hardship" to the crewman, he may cause him to be deported on another vessel of the same transportation line, "unless the Attorney General finds this to be impracticable." The reasonable inference is that if the Attorney General finds it impossible or impracticable to remove the crewman either on his own ship or on another of the same line he may effect the removal by other means. Nothing in those provisions supports the conclusion that if deportation by either of those methods would be impracticable, the Section 252(b) proceeding must terminate and a new proceeding under Section 242 be initiated.

Contrary to the decision below, the fact that Section 252(b) has been held inapplicable where expulsion proceedings are begun after the crewman's ship has sailed is not a reason for requiring abandonment of a seasonably commenced proceeding because the ship sails before deportation can be effected. If the validity of a deportation order entered pursuant to Section 252(b) depends, as the court below held, on the ability of the Service to deport the crewman on his own ship, Congress' expressed intent not to require a full eviden-

tiary hearing under Section 242 before a special inquiry officer in proceedings to expel alien crewmen under Section 252(b) could be readily defeated. As this case demonstrates, a crewman whose conditional landing permit has been revoked pursuant to Section 252(b) can easily prolong the expulsion process until after his ship has sailed.

Finally, a hearing before a special inquiry officer on a claim of anticipated persecution is not required by Section 243(h) even in ordinary expulsion proceedings under Section 242. By regulations designed to provide for resolution of all issues in a single proceeding, applications for asylum under Section 243(h), as well as for other forms of discretionary relief, are ruled on in the first instance by the special inquiry officer in cases in which Section 242 procedures are required. Requests for asylum made by crewmen against whom proceedings under Section 252(b) have been instituted, however, are governed by a different regulation, under which the decision whether parole shall be granted is made by the District Director. Since it is undisputed that respondent was fully heard under the regulation, in proceedings which have received careful judicial review, he has been accorded the full procedural protection to which he is entitled.

ARGUMENT

AN EXPULSION PROCEEDING UNDER SECTION 252(b), COMMENCED WHILE THE CREWMAN'S SHIP IS STILL IN PORT, NEED NOT BE ABANDONED, AND NEW PROCEEDINGS UNDER SECTION 242 INITIATED, IF THE SHIP SAILS BEFORE THE CREWMAN'S DEPORTATION THEREON CAN BE EFFECTED

Section 252(a)(1) provides that an immigration officer may, in his discretion, grant an alien crewman a conditional permit to land in the United States, "subject to revocation in subsequent proceedings as provided in subsection (b)," for the period (not to exceed 29 days) during which his vessel[7] remains in port. Under subsection (b), an immigration officer may revoke the conditional permit if he determines that the alien "is not a bona fide crewman, or does not intend to depart on the vessel * * * which brought him"; the immigration officer may then

> take such crewman into custody, and require the master or commanding officer of the vessel * * * on which the crewman arrived to receive and detain him on board such vessel * * *, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States. * * * Nothing in this section shall be construed to require the procedure prescribed in [Section 242 of the Act] to cases falling within the provisions of this subsection.

[7] Although the Act's provisions with respect to alien crewmen also apply to *airmen*, see note 10, 13, *infra*, our discussion is limited to cases involving alien *seamen*.

This case involves the applicability of the exemption from the detailed hearing requirements of Section 242 where expulsion [8] proceedings are initiated under Section 252(b) while the alien crewman's ship is still in port, but the crewman is unable to be deported on that ship. After respondent advised an immigration officer that he did not intend to depart on his ship, his conditional landing permit was revoked and he was ordered returned to his ship for deportation. Respondent's ship sailed, however, during the pendency of judicial proceedings to test the legality of his expulsion in respect of the claim that he would be persecuted if he returned to Yugoslavia. The issue here is whether, after the entry of a final judgment sustaining the validity of his expulsion under Section 252(b), and the intervening departure of his ship, petitioner may be deported on the basis of the Section 252(b) proceeding, without commencing a new proceeding pursuant to Section 242.

The court below answered this question in the negative. Under the court's interpretation of the Act, expulsion and deportation pursuant to Section 252(b) "is authorized only if it can be accomplished by returning the crewman to his own vessel, with an

[8] In this brief we have adopted the terminology employed by the Court in *Kwong Hai Chew* v. *Colding*, 344 U.S. 590, 596 n. 4: "'[E]xclusion' means preventing someone from entering the United States who is actually outside of the United States or is treated as being so. 'Expulsion' means forcing someone out of the United States who is actually within the United States or is treated as being so. 'Deportation' means the moving of someone away from the United States, after his exclusion or expulsion." See also *Leng May Ma* v. *Barber*, 357 U.S. 185, 187.

exception for practical exigencies which goes no farther than to permit prompt deportation on another vessel arranged before the departure of the vessel on which the alien was a crewman" (A. 69). The court held, therefore, that respondent could be deported only after a hearing before a special inquiry officer pursuant to Section 242.

We believe that the decision below distorts the plain meaning of Section 252 to achieve a result which has no support in the history or purpose of the Act's provisions relating to alien crewmen. Section 252 was one of several provisions enacted by Congress in response to the problems presented by alien crewmen who, like respondent, are tempted to use the privilege of shore leave as a means to effect unlawful permanent residence in the United States (see pp. 20–21, *infra*). The court below recognized that expulsion proceedings under Section 252(b) were properly invoked in this case and that respondent could have been lawfully deported if the judicial proceedings which he instituted had been completed while his ship remained in port (A. 66). But by limiting the applicability of Section 252(b) to circumstances which are largely within the control of the crewman, the court below has rendered virtually useless the procedure which Congress prescribed for the expulsion of alien crewmen who, like respondent, do not intend to depart on their ships. In addition, the decision below conflicts with the holdings of the only other circuits in which the same issue has arisen: *United States ex rel. Kordic* v. *Esperdy*, 386 F. 2d 232 (C.A. 2), cer-

tiorari denied, 392 U.S. 935, and *Glavic* v. *Beechie*, 340 F. 2d 91 (C.A. 5), affirming 225 F. Supp. 24 (S.D. Tex.).

A. THE EXPULSION PROCEDURES OF SECTION 252(b) WERE ENACTED IN RESPONSE TO THE SERIOUS PROBLEMS PRESENTED BY THE ABUSE OF SHORE LEAVE PRIVILEGES AND THE PURPOSE OF THE PROVISION WOULD BE FRUSTRATED UNDER THE DECISION BELOW

1. Section 252 provides the exclusive procedures for the temporary admission, other than by parole, of nonimmigrant alien crewmen.[9] Temporary landing permits may be issued only to persons who are within the

[9] An alien crewman who is seeking admission as an immigrant and who is in possession of valid immigrant documents may be admitted for permanent residence in accordance with Sections 235–237 of the Act, 8 U.S.C. 1225–1227 (8 C.F.R. 252.1(b)(1)).

As in cases involving other classes of nonimmigrants, the Attorney General may, in his discretion, waive certain grounds for the exclusion of alien crewmen (Section 212(d)(3)(B), 8 U.S.C. 1182(d)(3)(B)) or temporarily parole an alien crewman into the United States "for emergent reasons or reasons deemed strictly in the public interest" (Section 212(d)(5), 8 U.S.C. 1182(d)(5)) or for hospital treatment in the case of a crewman who is inadmissible for health reasons (Section 253, 8 U.S.C. 1283) (8 C.F.R. 253.1). Such parole, however, "shall not be regarded as an admission of the alien" (Section 212(d)(5)).

Although it would seem possible for an alien crewman to obtain an individual visa under some other nonimmigrant classification (*e.g.*, as a tourist under Section 101(a)(15)(B), 8 U.S.C. 1101(a)(15)(B)), neither the Act nor the regulations provide that the crewman's possession of such a visa authorizes his admission under the procedures prescribed in Sections 235–237 rather than the provisions of Section 252(a).

definition of "crewman" in Section 101(a)(15)(D)[10] and who are not otherwise excludable on any of the grounds enumerated in Section 212(a). Unlike other classes of nonimmigrant aliens,[11] a crewman may be admitted without an individual visa if the crew list on which his name appears has been visaed by a consular officer.[12] If the immigration officer finds that the crewman is eligible to land temporarily, he may, in his discretion, issue a conditional landing permit under subsection (a)(1), for the period (not to exceed 29 days) during which the vessel is in port, if he is satisfied that the crewman intends to depart on that vessel,[13]

[10] Section 101(a)(10), 8 U.S.C. 1101(a)(10) defines "crewman" as "a person serving in any capacity on board a vessel or aircraft." Under Section 101(a)(15)(D), 8 U.S.C. 1101(a)(15)(D), nonimmigrant status is accorded to

> an alien crewman serving in good faith as such in any capacity required for normal operation and service on board a vessel (other than a fishing vessel having its home port or an operating base in the United States) or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft.

[11] An alien within one of the other classes of nonimmigrants defined in Section 101(a)(15) may be admitted for temporary residence or travel in the United States provided he has obtained a valid nonimmigrant visa from a consular officer and is not subject to any of the other grounds for exclusion specified in Section 212 (Sections 212(a)(26)(B) (8 U.S.C. 1182(a)(26)(B)), 214 (8 U.S.C. 1184), 221(a)-(c) (8 U.S.C. 1201(a)-(c)), 222(c)-(d) (8 U.S.C. 1202(c)-(d)).

[12] Section 221(f), 8 U.S.C. 1201(f).

[13] Under 8 C.F.R. 252.1(d), a conditional landing permit may be issued under Section 252(a)(1) to a crewman who intends to rejoin his vessel at another United States port and has received written permission from the master of his vessel to do so (see

or under subsection (a)(2), for a period not to exceed 29 days if he is satisfied that the crewman intends to depart on another vessel within that period."[14]

Unlike other classes of nonimmigrant aliens, the alien crewman has no right to a hearing before a special inquiry officer on the question of his admissibility into the United States.[15] The decision of the immigration officer refusing to issue a landing permit is a final administrative determination, without right to appeal to the Board of Immigration Appeals, and the master must detain the crewman aboard the vessel while it is in port and remove him from the United States when the vessel sails.[16] Alien crewmen

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note, [illegible], *infra*). That regulation also provides that airmen may be issued permits under Section 252(a)(1) ("D–1" permits) with the understanding that they will depart within 29 days on another aircraft of the same transportation line. Although the court below apparently did not consider the effect of its decision on the expulsion of airmen under Section 252(b), in the case of an aircraft which changes its crew in the United States it would ordinarily be impossible to satisfy the court's requirement that an *airman* granted a D–1 permit must be deported on his own aircraft or on "another [aircraft] arranged before the departure of the [aircraft] on which the alien was a crewman" (A. 69, see pp. 12–13, *supra*; note 34, *infra*).

[14] Definite arrangements for the crewman to depart on another vessel must be made prior to the issuance of the landing permit and the immigration officer must give prior consent to the discharge of the crewman from his ship's company (8 C.F.R. 252.1 (d)(2)). Section 256 of the Act, 8 U.S.C. 1286, imposes a penalty of $1000 on the master of a vessel who discharges an alien crewman without obtaining prior consent.

[15] Section 235(b), 8 U.S.C. 1225(b); 8 C.F.R. 235.6(a), 252.1(b).

[16] Sections 235(b) (8 U.S.C. 1225(b)), 236(b) (8 U.S.C. 1226(b)), 254 (8 U.S.C. 1284); see pp. 30–33, *infra*.

In all cases, upon the alien's arrival at a port of entry he is inspected by an immigration officer to determine whether he is

who are admitted under Section 252, unlike other classes of nonimmigrants, are not eligible to obtain an adjustment of status to permanent residence or to another nonimmigrant classification.[17]

Section 252(b), quoted above, prescribes a special procedure for the expulsion of an alien crewman, like respondent, who has been granted a conditional landing permit (under Section 252(a)(1)) for the period during which his vessel is in port. If an immigration officer determines that the alien is not a bona fide

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eligible for admission into the United States (Sections 232–235 (a), 8 U.S.C. 1222–1225(a)). Except in cases involving *alien crewmen*, stowaways, and subversive aliens, if it does not appear to the immigration officer that the alien is "clearly and beyond a doubt entitled to land," the alien is detained for an evidentiary hearing before a special inquiry officer (Sections 235(b)–(c) (8 U.S.C. 1225(b)–(c)), 273(d) (8 U.S.C. 1323(d)); in most cases, aliens are paroled into the United States under Section 212(d)(5) pending determination of their admissibility, see *Leng May Ma* v. *Barber*, 357 U.S. 185, 186, 190). If the special inquiry officer determines that the alien is ineligible for admission, the alien may appeal to the Board of Immigration Appeals (Section 236(b) (8 U.S.C. 1226(b), 8 C.F.R. 236.5). When a final order of exclusion has been entered, the alien is to be immediately deported "to the country whence he came" and, if practicable, on the same vessel on which he arrived (Section 237(a), 8 U.S.C. 1227(a); except in certain cases, the expenses of detention and deportation of the excluded alien are to be borne by the transportation line which brought him, *ibid.*). An alien may obtain judicial review of a final exclusion order only by habeas corpus proceedings (Section 106(b), 8 U.S.C. 1105a(b)).

[17] Sections 245 (8 U.S.C. 1255), 248 (8 U.S.C. 1258); 8 C.F.R. 252.1(f). The regulation provides, however, that an alien crewman granted a permit under Section 252(a)(1) may be granted a permit under Section 252(a)(2) authorizing him to depart on another ship if the crewman is otherwise eligible for such a permit, see note 14, *supra*.

crewman or does not intend to depart on his ship, he may revoke the landing permit, take the alien into custody, and, if practicable, require the master of his vessel to detain him on board. The alien crewman is to be deported from the United States at the expense of the transportation line which brought him. An alien crewman whose landing permit is revoked while his vessel is in port, unlike other classes of nonimmigrants, is not entitled to a hearing before a special inquiry officer or to review by the Board of Immigration Appeals,[18] nor is he eligible for discretionary relief by suspension of deportation and adjustment of status to permanent residence.[19] By regulation, an

[18] See p. 11, *supra*.

An alien in the United States (including an alien crewman) may be expelled and deported for any of the grounds enumerated in Section 241(a) (8 U.S.C. 1251(a)). An alien who must be proceeded against under Section 242 (8 U.S.C. 1252) (excluding an alien crewman whose landing permit has been revoked under Section 252(b)) is entitled to notice and an evidentiary hearing (with counsel) before a special inquiry officer, whose finding that the alien is deportable must be supported by substantial evidence. The alien may appeal an order of deportation to the Board of Immigration Appeals (8 C.F.R. 242.21), and, if the order is upheld by the Board, he may obtain judicial review on the administrative record exclusively in a court of appeals (Section 106(a), 8 U.S.C. 1105a(a)); see *Foti* v. *Immigration and Naturalization Service*, 375 U.S. 217; *Cheng Fan Kwok* v. *Immigration and Naturalization Service*, 392 U.S. 206.

[19] Sections 244(f) (8 U.S.C. (Supp. III) 1254(f)), 245 (8 U.S.C. 1255).

Under Sections 243 and 244 (8 U.S.C. 1253, 1254), the Attorney General is authorized to designate the country to which the alien will be deported (if practicable, to a country designated by the alien) (Section 243(a)), and in his discretion, to allow the alien to depart voluntarily at his own expense (Section 244(e)), to suspend deportation and adjust the alien's status to permanent residence (Section 244(a)–(d)), and under

alien crewman whose landing permit has been revoked and who claims that he would be persecuted if he returned to a Communist country may be paroled into the United States in the discretion of the District Director.[20]

Section 243(h), to withhold deportation to any country in which the alien would be subject to persecution. By regulation, the designation of the country to which the alien is to be deported and the granting of any discretionary relief is made by the special inquiry officer in the original expulsion proceedings (8 C.F.R. 242.17, 245.2(a); see p. 36, *infra*).

Section 244(f), which specifies that all of the provisions of Section 244 shall be *inapplicable* to aliens who entered the United States as crewmen, would appear to bar the allowance of voluntary departure to an alien crewman (Section 244(e)) as well as suspension of deportation (Sections 244(a)–(d)). The Board of Immigration Appeals has ruled, however, that the exemption of alien crewmen in Section 244(f), which was added in 1962 together with a revision of the provisions relating to suspension of deportation, was intended to apply only to suspension of deportation and that it did not bar discretionary relief by allowance of voluntary departure to a crewman who had overstayed his leave and who was ordered deported under Section 242 (*Matter of Vara-Rodriguez*, 10 I. & N. 113).

The pertinent regulation (8 C.F.R. 252.2) with respect to crewmen who are proceeded against under Section 252(b) is silent with respect to the method of selecting the country to which the crewman is to be deported and the availability of voluntary departure in cases where the crewman is unable to be deported on the ship which brought him.

[20] 8 C.F.R. 253.1(f) (formerly 8 C.F.R. 253.1(e), see Appendix, *infra*, p. 46). The circumstances in which relief may be granted under the regulation may not be precisely coextensive with the discretionary relief available under the statutory counterpart, Section 243(h), since the regulation is addressed to anticipated persecution in a "Communist, Communist-dominated, or Communist-occupied country," while the statute speaks of persecution in "any country."

The expulsion procedures of Section 252(b) do not apply, however, to a crewman who jumps ship and enters with no permit at all;[21] nor to a crewman admitted on condition that he depart within 29 days on another vessel who fails to comply with the condition;[22] nor to a crewman admitted (like respondent) with the understanding that he will leave on the same vessel, if the ship sails before his landing permit is revoked.[23] In those cases, the crewman can be proceeded against only in accordance with the procedures of Section 242.[24]

2. The foregoing provisions—as well as other, equally important provisions specifying the duties and liabilities of transportation lines with respect to the detention and deportation of alien crewmen[25]—demonstrate Congress' particular concern for the effective regulation of temporary shore leave. In the legislative studies leading to the enactment of the Immigration and Nationality Act, Congress recognized that the traditional privilege of shore leave is necessary to international trade and comity. It also found, however, that shore leave had become an easy and frequently used method for alien crewmen to desert their ships and remain illegally in the United States. See S. Rep. No.

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[21] See *United States ex rel. Kordic* v. *Esperdy*, *supra*, 386 F. 2d at 237.

[22] 1 Gordon & Rosenfield, *Immigration Law and Procedure* (1967 rev.), §§ 6.3a, 6.3b.

[23] *Matter of M*, 5 I. & N. 127; see *Cheng Fan Kwok* v. *Immigration and Naturalization Service*, 392 U.S. 206, 207.

[24] 1 Gordon & Rosenfield, *supra*, § 6.3b.

[25] Sections 254–257, 8 U.S.C. 1284–1287; see generally 1 Gordon & Rosenfield, *supra*, § 6.4.

1515, 81st Cong., 2d Sess., pp. 550–558.[26] The exceptions from ordinary procedures which Congress prescribed in cases involving alien crewmen reflect the particular individual and governmental considerations with respect to the regulation of shore leave privileges.

Other classes of nonimmigrant aliens defined in the Act are comprised largely of persons who seek admission to this country to pursue their employment or education or for temporary personal or business purposes.[27] Their coming here frequently involves great expense to the individual or his employer and dislocation of his family or separation from them. Denial of admission to such a person at a port of entry, or expulsion prior to the completion of the purpose of his visit, imposes even greater expense and

[26] *Id.* at 550:

> The problems relating to seamen are largely created by those who desert their ships, remain here illegally beyond the time granted them to stay, and become lost in the general populace of the country. For a number of years, it has been generally recognized, both by Government officials and others, that the temporary "shore leave" admission of alien seamen who remain illegally constitutes one of the most important loopholes in our whole system of restriction and control of the entry of aliens into the United States. The efforts to apprehend these alien seamen for deportation are encumbered by many technicalities invoked in behalf of the alien seamen and create conditions incident to enforcement of the laws which have troubled the authorities for many years.

The Senate Report also discusses the provisions governing the admission and expulsion of alien crewmen prior to the enactment of the Immigration and Nationality Act, *id.* at 545–548, 624–629.

[27] See *e.g.*, Section 101(a)(15) (B), (E), (F), (H), 8 U.S.C. 1101(a)(15) (B), (E), (F), (H).

dislocation and the risk of future prejudice. An alien crewman, on the other hand, arrives in this country at no personal expense and without the prior screening by a consular officer required of other nonimmigrant aliens;[28] his separation from his home and family is not incident to any purpose in the United States but to his calling as a crewman, irrespective of what countries his ship may visit. Although shore leave provides an opportunity for relief from the crewman's life at sea, the denial or suspension of that temporary privilege plainly involves none of the serious consequences which may result from the exclusion or expulsion of other nonimmigrants. And in view of the frequent abuses of shore leave privileges, Congress reasonably provided for the conditional entry of alien crewmen[29] and prescribed less formal procedures for their admission and, in some cases, for their expulsion.

As already noted, Congress did not authorize expulsion proceedings under Section 252(b) for alien crewmen in all circumstances. Section 252(b) ap-

[28] See Sections 221(a)–(b), (d), (g) (8 U.S.C. 1201(a)–(b), (d), (g)), 222(c)–(e) (8 U.S.C. 1202(c)–(e)); see generally 1 Gordon & Rosenfield, *supra*, §§ 3.9–3.11.

[29] The landing permit (Form I–95) provides: "By accepting this conditional permit to land the holder agrees to all the conditions incident to the issuance thereof, and to deportation from the United States in accordance with the provisions of section 252(b) of the Immigration and Nationality Act." In *United States ex rel. Stellas* v. *Esperdy*, 366 F. 2d 266 (C.A. 2), vacated on other grounds, 388 U.S. 462, the court noted, in dictum (366 F. 2d at 269), that an alien crewman "waive[s] any Constitutional right to full-scale deportation proceedings" by accepting the conditional landing permit. Compare A. 65 n. 2.

plies only to crewmen who are permitted to land with the understanding that they will depart with their ships and who are found to have a contrary intention during the time their ships are still in port. The difference in procedures, based upon the presence of the crewmen's ships in port, is entirely reasonable. Crewmen who overstay their landing privileges are, of course, subject to expulsion.[30] But within that class there may be many crewmen who have been able to evade detection for a number of years and who have established family or business relationships in this country.[31] Although these relationships have been established during a period of unlawful residence, the expulsion of the crewman may have serious consequences, similar to those in cases involving immigrant aliens, which make appropriate a formal hearing, including disposition of any requests for discretionary relief from expulsion to which the crewman may be eligible.[32] In cases involving alien

[30] See Section 241(a)(9), 8 U.S.C. 1251(a)(9).

[31] See *Foti* v. *Immigration and Naturalization Service*, 375 U.S. 217, 218 (10 years' unlawful residence).

[32] As noted above, pp. 17–19 & nn. 17, 19, *supra*, aliens who entered the United States as crewmen are ineligible for suspension of deportation and adjustment of status to permanent residence. Although the congressional studies which led to the Immigration and Nationality Act noted that alien crewmen who had remained unlawfully in the United States frequently used those methods to cure their illegal status (see S. Rep. No. 1515, 81st Cong., 2d Sess., pp. 556, 594–603), the Act, as originally passed, did not preclude alien crewmen from obtaining such discretionary relief. Alien crewmen were excluded from relief under Section 245 (8 U.S.C. 1255) (the general provision for adjustment of status of non-deportable aliens) in 1960 (P.L. 86–648, Section 10, 74 Stat. 505) because of the

crewmen who are proceeded against under Section 252(b), however, the limited time during which such proceedings are authorized—while the crewmen's ship is still in port—necessarily precludes the possibility that the crewman's status will have been altered in reliance on his expectation of remaining in the United States. The presence of the crewman's ship, moreover, would ordinarily provide a prompt and convenient means of effecting his removal. But, as we argue below, the departure of the ship before the crewman can be physically placed on board does not require a new proceeding under Section 242.

3. The decision below frustrates the directive expressed in the final sentence of Section 252(b):

> Nothing in this section shall be construed to require the procedure prescribed in [Section 242 of the Act] to cases falling within the provisions of this subsection.

The effect of that provision in the circumstances of this case is unambiguously stated in the House and Senate committee reports (H. Rep. No. 1365, 82d Cong.,

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"frequent abuses of the immigration laws by deserting seamen" (H. Rept. No. 2088, 86th Cong., 2d Sess., p. 2). In the 1962 amendments to the Act (P.L. 87–885, Section 4, 76 Stat. 1249) alien crewmen were made ineligible to obtain suspension of deportation and adjustment of status (for deportable aliens) under Section 244(a) (8 U.S.C. 1254(a), see *Foti* v. *Immigration and Naturalization Service*, 375 U.S. 217, 220 n. 4). "The excessive severity of this absolute preclusion, which did not permit consideration of equities established by long-time residents, led to the 1965 amendment restricting the preclusion of suspension to crewmen who entered after June 30, 1964" (2 Gordon & Rosenfield, *supra*, § 7.9c(1)). See P.L. 89–236, Section 12(b), 79 Stat. 918, amending Section 244(f) of the Act, 8 U.S.C. (Supp. III) 1254(f).

2d Sess., p. 66; S. Rep. No. 1137, 82d Cong., 2d Sess., pp. 35–36):

> The procedure set forth in section 242 of the bill is not applicable in the case of the removal of a crewman whose conditional permit to land temporarily has been revoked.

Yet, this congressional intent could be readily defeated under the court of appeals' narrow construction of Section 252(b). The fact is that a crewman whose landing permit has been revoked while his ship is still in a United States port can easily delay his removal until after his vessel has departed. Indeed, in both this case and in *United States ex rel. Kordic* v. *Esperdy, supra,* 386 F. 2d at 233–234, the crewmen were able, by resort to a variety of administrative and judicial proceedings, to achieve that very result. The period during which a ship will remain in American waters is variable and usually short. A tanker, which does not have to find new cargo, for example, may sail as early as the next favorable tide after discharging its cargo. The government has no power to force the ship to postpone its departure until judicial review of the crewman's expulsion or administrative proceedings on a claim of persecution can be completed.

The court of appeals attempted to answer the contention that its interpretation of Section 252(b), plus the availability of judicial review of the crewman's expulsion, would render the section useless for any purpose even when properly invoked while the crewman's vessel was still in port. Thus, contrary to the obvious fact that respondent's removal on board his

ship was prevented by his suit to enjoin his deportation, the court below cited the present case as proof that "no great delay need be involved in the disposition of applications for relief" (A. 75). To substantiate that observation, the court noted (*id.* n. 18) that:

> Appellant's [respondent's] complaint was filed on the day the District Director's order was entered. The district court issued an order to show cause on the same day, returnable the following morning. The hearing was held as noticed, and an order denying relief was entered in the course of the same day.

The proceedings cited by the court of appeals, however, were not the proceedings on respondent's initial injunction action after his conditional landing permit had been revoked, but rather the proceedings before Judge Kilkenny on respondent's subsequent suit to enjoin his deportation after his unsuccessful quest for relief by private bill and the unsuccessful renewal of his request for administrative parole (pp. 6–7, *supra*). The initial suit, decided by Judge East, had been instituted in January 1965, a year and a half earlier, and had not finally been adjudicated until July 1965, following the resumption of the administrative proceedings pursuant to Judge East's remand order (pp. 4–5, *supra*). Judge Kilkenny, whose decision in respondent's second injunction suit was reversed by the court of appeals, would not have been able to rule on the issues with such dispatch had it not been for the prior litigation before Judge East.

B. NOTWITHSTANDING THE DEPARTURE OF RESPONDENT'S SHIP BEFORE HIS DEPORTATION COULD BE EFFECTED, RESPONDENT'S EXPULSION WAS A CASE "WITHIN" SECTION 252(b) AND THEREFORE EXEMPT FROM THE REQUIREMENTS OF SECTION 242

1. The court of appeals' holding that respondent may not be deported except after detailed administrative proceedings under Section 242 must rest, if the statutory command is to be given effect, on a finding that respondent's expulsion is not a case "falling within" Section 252(b). Although that formulation is not expressly stated in the court's opinion, the court concluded that Section 252(b) is inapplicable, with certain narrow exceptions not encompassing this case (see p. 29, *infra*), where the crewman is unable to be deported on the ship on which he arrived. That determination proceeds from the court's interpretation of the provision in Section 252(b) which authorizes an immigration officer, after he has revoked the conditional landing permit, to "take such crewman into custody, and require the master * * * of the vessel * * * on which the crewman arrived to receive and detain him on board such vessel * * *, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him * * *." The principal error in the court's reasoning is that it has viewed the presence of the crewman's ship not only as a limitation on the circumstances in which proceedings under Section 252(b) may be initiated but also as a limitation on the circumstances in which the crewman's deportation may be effected under that section after his landing permit has been revoked.

From the language quoted above, it is apparent that Congress contemplated that a crewman whose landing permit was revoked in a proceeding commenced under Section 252(b) would ordinarily be deported aboard the ship on which he arrived. To that extent there can be no quarrel with the assumptions underlying the court of appeals' decision. But it is also clear that Congress recognized the possibility that another mode of removal might be necessary. The words "if practicable" show that Congress anticipated that for a variety of reasons it might not be feasible to require the master of the crewman's own vessel to "receive and detain him on board." The plain implication is that if this is not practicable it should not be required. But Congress did not say or intimate that in the event that the crewman could not be removed on his ship, the Section 252(b) proceeding was to abort and the crewman's deportation would be unlawful except in accordance with proceedings commenced anew before a special inquiry officer under Section 242. After *authorizing* the Service to require the master of the crewman's vessel to receive him on board "if practicable," the statute directs, in mandatory terms, that "such crewman shall be deported from the United States at the expense of the transportation line which brought him." The fair interpretation of these provisions, particularly when read in conjunction with the final sentence that nothing contained in the section is to be "construed to require the procedure prescribed in [Section 242]," is that Congress intended to give flexibility to the Service with respect to the physical means of effecting the crewman's removal,

without encumbering the expulsion process with the procedures required in other cases.

2. Referring to the "if practicable" clause of Section 252(b), the court of appeals commented (A. 71 n. 12) that:

> Later provisions of the statute indicate that the qualification "if practicable" refers to a condition affecting a particular crewman or vessel which renders immediate detention aboard unfeasible, such as illness of the crewman or movement of the vessel to another port of the United States, *but not to the departure of the vessel for a foreign port.* [Emphasis added.]

We can find no support in the language or legislative history of the statute, however, for the court's conclusion that the applicability of Section 252(b) should depend on the wholly fortuitous event that the crewman's ship subsequently sailed for another United States port rather than a foreign port. Certainly a typical contingency in which it would not be "practicable" to deport the crewman on the vessel on which he arrived would be one in which the ship had sailed from our waters. Indeed that would be a more obvious kind of "impracticability" than if the ship were still in our waters but in another port.[33]

[33] The court apparently derived the limited exception for the "movement of the [crewman's] vessel to another port of the United States" from the regulation (8 C.F.R. 252.1(d), see note 13, *supra*) authorizing the issuance of a "D–1" permit to a crewman who intends to join his ship at a port other than the port of his entry. Presumably the court would allow deportation pursuant to Section 252(b) by removing such a crewmen to the port at which his ship is found. But, in view of the source

The "later provisions" to which the court referred are contained in Section 254 (8 U.S.C. 1284, Appendix, *infra*, pp. 42–44). Nothing in Section 254, however, supports the court's differentiation between the sailing of the crewman's ship for a foreign port and its departure for another United States port. Insofar as Section 254 is relevant to the question here, it provides further evidence that if the Service, for any cogent reason, determines that it would not be practicable to use the crewman's ship to effect his deportation pursuant to proceedings properly commenced under Section 252(b), it may use other means to effectuate its order.

Section 254(a) imposes a fine upon the owner or master of a vessel who fails to remove an alien crewman of his ship whom he has been ordered to deport under Section 252. Section 254(b) provides that proof that the name of such crewman did not appear on the outgoing manifest of the vessel shall be *prima facie* evidence of the master's failure to effect the deportation. Section 254(c) provides:

> If the Attorney General finds that deportation of an alien crewman under this section on the vessel * * * on which he arrived is impracticable or impossible, or would cause undue hardship to such alien crewman, he may cause the alien crewman to be deported from the port of arrival or any other port on another vessel

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of the "exception," it is not entirely clear whether the court would approve such removal in a case, like the present case, where the crewman had not obtained permission to rejoin his ship at another port.

> * * * of the same transportation line, unless the Attorney General finds this to be impracticable. * * * The vessel * * * on which the alien arrived shall not be granted clearance until [the expenses of the crewman's detention and deportation] have been paid or their payment guaranteed to the satisfaction of the Attorney General. * * *

On the basis of Section 254(c), the court apparently concluded that unless the deportation of a crewman proceeded against under Section 252(b) can be effected either on the crewman's ship or on another vessel of the same transportation line pursuant to arrangements made prior to his ship's departure, the proceeding necessarily aborts and the removal process must be started over again with full proceedings before a special inquiry officer.[34] We find nothing

[34] The court of appeals commented as follows on Section 254 (c) (A. 72–73):

> Although the first sentence recognizes that removal of a crewman following summary revocation of his landing permit may be accomplished on a vessel other than the one upon which the crewman arrived, the only alternative authorized is deportation "on another vessel or aircraft of the same transportation line," if this be practicable. The Attorney General is not given general authority to deport the alien crewman by any available means. More significantly, the section contemplates that the alternative arrangement shall be made while the vessel upon which the crewman arrived is still in port—his ship is not to be cleared for departure until the expenses incident to the alternative arrangement have been paid or guaranteed.

We note that the "exception for practical exigencies" which the court recognized at an earlier part of its opinion (A. 69, see pp. 12–13, *supra*) appears to permit prompt deportation of the crewman on *any* vessel other than the one he arrived on if the arrangement is made prior to his own ship's departure—not

in Section 254, however, which either requires or warrants this conclusion. It is evident that Congress' prime concern in that section is with penal and monetary matters—the exaction of fines from shipowners for failing to carry out deportation orders (subsections (a) and (b)) and ensuring that the expenses of deportation are borne by the owners of the vessels (subsection (c)). But Congress did not diminish the discretion given to the Attorney General as to the mode of effecting the removal of the crewman. Section 254(c) provides that if the Attorney General finds that the deportation of a crewman on the vessel on which he arrived "is impracticable or impossible, or would cause undue hardship" to the crewman, he may cause him to be deported, from the port of arrival or any other port, on another vessel of the same line, *unless the Attorney General finds this too to be impracticable*. Contrary to the interpretation of the court below, the reasonable inference is that if the Attorney General finds it impossible or impracticable to deport the crewman either on his own ship or on another vessel of the same line, he may effect the removal by other means.

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necessarily another vessel of the same line. Under the court's "exception," the Attorney General may use the alternative means if (1) it is employed promptly after the departure of the crewman's vessel and (2) it is "arranged before the departure of" that vessel. Leaving aside such troublesome collateral questions as *how* promptly the alternative means must be employed, there appears to be nothing in the statute which requires that the alternative mode of removal have been "arranged before the departure of" the crewman's ship.

Section 254(c) possibly contemplates that the alternative arrangement of deportation on another vessel of the same line will ordinarily be made while the crewman's ship is still in port. But where the vessels of the transportation line which employs the crewman make infrequent calls at United States ports, such an arrangement is plainly impracticable. And even if the Service does not obtain payment or security for the costs of the crewman's detention and deportation before his ship departs, there is no reason to believe that Congress intended that the failure of the Service to protect its pecuniary interests should thereby destroy the basis of the deportation order under Section 252(b) and entitle the crewman to a Section 242 proceeding.

3. The court of appeals found support for its decision in the fact that Section 252(b) is, by its terms, applicable only in a limited class of cases. Observing that the expulsion procedure of Section 252(b) would have been inapplicable if respondent's ship had sailed before his landing permit was revoked, the court remarked (A. 73):

> This much being conceded, it is difficult to see why the result should be different when section [252(b)] proceedings are begun, but not completed, before the vessel departs. Whenever the statutory scheme for utilizing the availability of an alien crewman's vessel to effect his speedy deportation is frustrated, the justification for quick resolution of the crewman's status is gone. What reason remains for not then affording the crewman the benefits of section [242]?

We submit, however, that the limited applicability of the statute is not a valid reason for construing it so narrowly that it is virtually useless to remedy the problem to which it is addressed. Acknowledging that under its interpretation "the time and effort which have already been invested in the aborted administrative process would be lost," the court observed that "summary deportation is not authorized simply as a device for saving administrative time, and, in any event, the time and effort invested in summary proceedings is, by definition, minimal" (A. 73). But the fact remains that Section 252(b) makes expressly clear that summary procedures are to apply where the crewman's ship is still in port when the expulsion process is initiated. The court's holding that a procedure that is valid when commenced must terminate and be replaced by new procedures if it is not concluded before the occurrence of a certain contingency represents a novel administrative doctrine. This case illustrates, moreover, that if the test of the validity of a Section 252(b) expulsion proceeding is whether the crewman's ship is still in port when it is concluded, the crewman has it within his power to defeat the expressed intention of Congress that the procedures prescribed by Section 242 shall not apply.

As noted above (p. 20, *supra*), Section 252(b) is a partial response to the serious problem presented by alien crewmen who abuse the privilege of shore leave. Congress determined that crewmen to whom that privilege is granted on their promise to depart with their ships should be promptly expelled if they manifest by their behavior, while their ships are still

in port, an intention to remain here beyond that time. Congress could, for example, have authorized similar procedures in cases involving ship-jumpers or other crewmen who overstay their temporary shore leave privileges. But the distinction which Congress made is a reasonable one (see p. 23, *supra*). Section 252(b) is applicable only in cases where immediate removal is likely to result in the least hardship to the crewman, and the grounds for expulsion are directly related to the regulation of shore leave and require findings that often cannot be made confidently until the crewman has landed. An unduly restrictive interpretation of Congress' limited direction could lead to a tightening of the policies respecting shore leave, to the detriment of international trade and comity and the disservice of all good faith applicants. Cf. *Leng May Ma* v. *Barber*, 357 U.S. 185, 190. As the court said in *United States ex rel. Kordic* v. *Esperdy, supra*, 386 F. 2d at 237, "Acceptance of appellants' position in this case, with its concomitant increase in the difficulty of expelling from the country seamen who suddenly decide to stay here permanently, would be quite likely to prompt some curtailment in the issuance of landing permits—an intention we are reluctant to impute to Congress."

C. EVEN IN ORDINARY EXPULSION PROCEEDINGS THERE IS NO STATUTORY RIGHT TO A HEARING BEFORE A SPECIAL INQUIRY OFFICER ON A REQUEST FOR ASYLUM UNDER SECTION 243(h)

Respondent has not questioned his deportability as an alien crewman whose conditional landing permit was validly revoked. His sole contention has been that he had a right to a hearing before a special inquiry

officer on his request for asylum under Section 243(h), which authorizes the Attorney General to withhold the deportation of an alien in the United States to any country in which, in his opinion, the alien would be subject to persecution on account of race, religion, or political opinion.

Even in ordinary expulsion proceedings under Section 242, however, there is no *statutory* right to a hearing before a special inquiry officer on a request for asylum under Section 243(h). The Act itself is silent with respect to the procedures to be followed in determining whether the Attorney General's authority should be favorably exercised in a particular case. By *regulation* (8 C.F.R. 242.8(a) and 242.17(c)) applications for relief under Section 243(h), as well as for other forms of discretionary relief (see note 19, *supra*), are ruled on in the first instance by the special inquiry officer who conducts the hearing under Section 242 and makes the primary determination of deportability. See *Foti* v. *Immigration and Naturalization Service,* 375 U.S. 217, 223; *Cheng Fan Kwok* v. *Immigration and Naturalization Service,* 392 U.S. 206, 212–213 n. 11, 214–215.[35] But a different

[35] Even in ordinary expulsion proceedings, however, this has not always been so. See *Foti* v. *Immigration and Naturalization Service*, *supra*, 375 U.S. at 230 n. 16. Prior to January 22, 1962 (26 F.R. 12112, 12114), the decision as to whether relief under Section 243(h) should be granted was made by the regional commissioner, an enforcement official, pursuant to a *recommendation* of a special inquiry officer (not necessarily the officer who made the determination of deportability) (8 C.F.R. (1958 rev.) 243.3(b)(2)).

regulation, 8 C.F.R. 253.1(e) (Appendix, *infra*, p. 46), governs requests for asylum made by crewmen against whom proceedings under Section 252(b) have been instituted. That regulation provides that an alien crewman whose conditional landing permit has been revoked and who claims that he cannot return to a Communist, Communist-dominated, or Communist-occupied country because of fear of persecution on account of race, religion or political opinion

> may be paroled into the United States under the provisions of section 212(d)(5) of the Act [36] for the period of time and under the conditions set by *the district director having jurisdiction over the area where the alien crewman is located.* [Emphasis added.]

Under that regulation a hearing before a special inquiry officer is not required. In ascertaining the facts relevant to the exercise of his discretion, the District Director may, as he did here, make use of the services of subordinate enforcement officials. *United States ex rel. Kordic* v. *Esperdy, supra,* 386 F. 2d at 234; *Glavic* v. *Beechie,* 225 F. Supp. 24, 25 (S.D. Tex),

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[36] Section 212(d)(5) (8 U.S.C. 1182(d)(5)) authorizes the Attorney General, in his discretion, to parole into the United States temporarily, on such conditions as he may prescribe, "for emergent reasons or for reasons deemed strictly in the public interest," any alien applying for admission. The statute provides that the parole shall not be regarded as an admission of the alien and that, when the purposes of the parole have been served, the alien shall be forthwith returned to the custody from which he was paroled and his case shall thereafter continue to be dealt with in the same manner as that of any other applicant for admission. See *Kaplan* v. *Tod,* 267 U.S. 228; cf. *Leng May Ma* v. *Barber,* 357 U.S. 185.

affirmed, 340 F. 2d 91 (C.A. 5).[37] It is undisputed that respondent was fully heard under the regulation in proceedings which received careful judicial review. He has been afforded the full procedural protection to which he is entitled.

CONCLUSION

It is therefore respectfully submitted that the judgment of the court of appeals should be reversed.

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DECEMBER 1968.

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[37] Nothing in *United States ex rel. Szlajmer* v. *Esperdy*, 188 F. Supp. 491 (S.D.N.Y.), is to the contrary. That decision, which occasioned the adoption of 8 C.F.R. 253.1(e) (see *Kordic*, *supra*, 386 F. 2d at 236), involved a crewman in respondent's situation who had received no hearing at all on his claim that he would be persecuted if he was returned to his homeland (188 F. Supp. at 494). The court held that a hearing is necessary, but did not suggest that the hearing must be before a special inquiry officer. Indeed, when *Szlajmer* was decided, in 1960, the initial determination whether relief under Section 243(h) should be granted was made by an official other than the special inquiry officer, even in ordinary expulsion proceedings. See note 35, *supra*.

APPENDIX

1. Sections 242(b), 243(h), 252, and 254 of the Immigration and Nationality Act, 66 Stat. 163 *ff.*, provide in pertinent part:

* * * * *

CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

* * * * *

APPREHENSION AND DEPORTATION OF ALIENS

SEC. 242 [8 U.S.C. 1252]. * * *

(b) A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and, as authorized by the Attorney General, shall make determinations, including orders of deportation. * * * No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceedings before a special inquiry officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this Act, as the Attorney General shall prescribe. Such regulations shall include requirements that—

> (1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

The procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section. * * *

* * * * *

COUNTRIES TO WHICH ALIENS SHALL BE DEPORTED; COST OF DEPORTATION

SEC. 243 [8 U.S.C. 1253]. * * *

* * * * *

(h) The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion and for such period of time as he deems to be necessary for such reason [1].

* * * * *

CHAPTER 6—SPECIAL PROVISIONS RELATING TO ALIEN CREWMEN

* * * * *

[1] As amended by the Act of October 3, 1965, Section 11(f), 79 Stat. 918. Prior to the amendment the phrase "persecution on account of race, religion, or political opinion" had read "physical persecution."

CONDITIONAL PERMITS TO LAND TEMPORARILY

SEC. 252 [8 U.S.C. 1282]. (a) No alien crewman shall be permitted to land temporarily in the United States except as provided in this section [and certain other sections, none of which are germane]. If an immigration officer finds upon examination that an alien crewman is a nonimmigrant under paragraph (15)(D) of section 101(a) [2] and is otherwise admissible and has agreed to accept such permit, he may, in his discretion, grant the crewman a conditional permit to land temporarily pursuant to regulations prescribed by the Attorney General, subject to revocation in subsequent proceedings as provided in subsection (b), and for a period of time, in any event, not to exceed—

(1) the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or

(2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived.

(b) Pursuant to regulations prescribed by the Attorney General, any immigration officer may, in his discretion, if he determines that an alien is not a bona fide crewman, or does not intend to depart on the

[2] *I.e.*, "an alien crewman serving in good faith as such in any capacity required for normal operation and service on board a vessel (other than a fishing vessel having its home port or an operating base in the United States) or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft" (Section 101(a)(15)(D), 8 U.S.C. 1101(a)(15)(D)).

vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a)(1), take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States. Until such alien is so deported, any expenses of his detention shall be borne by such transportation company. Nothing in this section shall be construed to require the procedure prescribed in section 242 of this Act to cases falling within the provisions of this subsection.

* * * * * *

CONTROL OF ALIEN CREWMEN

SEC. 254 [8 U.S.C. 1284]. (a) The owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft arriving in the United States from any place outside thereof who fails (1) to detain on board the vessel * * * any alien crewman employed thereon until an immigration officer has completely inspected such alien crewman, * * * or (2) to detain any alien crewman on board the vessel * * * after such inspection unless a conditional permit to land temporarily has been granted such alien crewman under section 252 [or certain other designated sections], or (3) to deport such alien crewman if required to do so by an immigration officer, whether such deportation requirement is imposed before or after the crewman is permitted to land temporarily * * *, shall pay to the collector of customs of the customs district in which the port of arrival is located or in which the failure to comply with the orders of the officer occurs

the sum of $1,000 for each alien crewman in respect of whom any such failure occurs. No such vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs. * * *

(b) Except as may be otherwise prescribed by regulations issued by the Attorney General, proof that an alien crewman did not appear upon the outgoing manifest of the vessel or aircraft on which he arrived in the United States from any place outside thereof, or that he was reported by the master or commanding officer of such vessel or aircraft as a deserter, shall be prima facie evidence of a failure to detain or deport such alien crewman.

(c) If the Attorney General finds that deportation of an alien crewman under this section on the vessel or aircraft on which he arrived is impracticable or impossible, or would cause undue hardship to such alien crewman, he may cause the alien crewman to be deported from the port of arrival or any other port on another vessel or aircraft of the same transportation line, unless the Attorney General finds this to be impracticable. All expenses incurred in connection with such deportation, including expenses incurred in transferring an alien crewman from one place in the United States to another under such conditions and safeguards as the Attorney General shall impose, shall be paid by the owner or owners of the vessel or aircraft on which the alien arrived in the United States. The vessel or aircraft on which the alien arrived shall not be granted clearance until such ex-

penses have been paid or their payment guaranteed to the satisfaction of the Attorney General. An alien crewman who is transferred within the United States in accordance with this subsection shall not be regarded as having been landed in the United States.

2. 8 C.F.R. 252.1 and 252.2 provide in pertinent part:

§ 252.1 *Examination of crewman.*

* * * * *

(d) *Authorization to land.* The immigration officer in his discretion may grant an alien crewman authorization to land temporarily in the United States for (1) shore leave purposes during the period of time the vessel or aircraft is in the port of arrival or other ports in the United States to which it proceeds directly without touching at a foreign port or place, not exceeding 29 days in the aggregate, if the immigration officer is satisfied that the crewman intends to depart on the vessel on which he arrived or on another aircraft of the same transportation line, and the crewman's passport is surrendered for safe keeping to the master of the arriving vessel, or (2) the purpose of departing from the United States as a crewman on a vessel other than the one on which he arrived, or departing as a passenger by means of other transportation, within a period of 29 days, if the immigration officer is satisfied that the crewman intends to depart in that manner, that definite arrangements for such departure have been made, and the immigration officer has consented to the pay off or discharge of the crewman from the vessel on which he arrived. A crewman granted a conditional permit to land under section 252(a)(1) of the Act and clause (1) of this paragraph is required to depart with his vessel from its port of arrival and from each other port in the United States to which it thereafter proceeds coastwise without touch-

ing at a foreign port or place; however, he may rejoin his vessel at another port in the United States before it touches at a foreign port or place if he has advance written permission from the master or agent to do so.

* * * * * *

§ 252.2 *Revocation of conditional landing permits; deportation.*

An alien permitted to land conditionally under § 252.1(d)(1) may, within the period of time for which he was permitted to land, be taken into custody by any immigration officer without a warrant of arrest and be transferred to the vessel upon which he arrived in the United States, if such vesel [*sic*] is in any port of the United States and has not been in a foreign port or place since the crewman was issued his condition [*sic*] landing permit, upon a determination by the immigration officer that the alien crewman is not a bona fide crewman or that he does not intend to depart on the vessel on which he arrived in the United States. The conditional landing permit of such an alien crewman shall be taken up and revoked by the immigration officer, and a notice on Form I–259 to detain and deport such alien crewman shall be served on the agent of the vessel, and if they are available, on the owner and the master or commanding officer of the vessel. Form I–99 shall be served on the crewman when he is taken into custody or as soon as practicable thereafter. On the written request of the master of the vessel, the crewman may be detained and deported, both at the expense of the transportation line on whose vessel he arrived in the United States, other than on the vessel on which he arrived in the United States, if detention or deportation on such latter vessel is impractical.

3. 8 C.F.R. 253.1(e) provided in pertinent part during the relevant period:[3]

§ 253.1 *Parole.*

* * * * * *

(e) *Crewman alleging persecution.* Any alien crewman denied a conditional landing permit or whose conditional landing permit issued under § 252.1(d)(1) of this chapter is revoked who alleges that he cannot return to a Communist, Communist-dominated, or Communist-occupied country because of fear of persecution in that country on account of race, religion, or political opinion may be paroled into the United States under the provisions of section 212(d)(5) of the Act for the period of time and under the conditions set by the district director having jurisdiction over the area where the alien crewman is located.

[3] 26 F.R. 11797 (December 8, 1961). Effective as of March 22, 1967, the pertinent paragraph was redesignated "(f)" and amended in an immaterial detail (32 F.R. 4341–4342).

U.S. GOVERNMENT PRINTING OFFICE: 1968

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 297

IMMIGRATION AND NATURALIZATION SERVICE,

Petitioner,

—v.—

VELJKO STANISIC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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Interest of *Amicus Curiae*

The American Civil Liberties Union's concern in this case is the Government's denial to alien seamen of statutory procedural safeguards which Congress has provided in deportation proceedings for aliens generally. Deportation is patently a drastic administrative remedy and every alien should be given the benefit of all of the statutory procedural safeguards in the absence of a clear legislative exception excluding seamen from these benefits.

Opinion Below

The opinion of the Court of Appeals is reported at 393 F. 2d 539.

Jurisdiction

The judgment of the Court of Appeals was entered on April 17, 1968. The jurisdiction of the Court is invoked under 28 U. S. C. 1254(1).

Question Presented

Whether Section 252(b) of the Immigration and Nationality Act provides an exception to the ordinary deportation procedure required by Sections 242 and 243 of the Act and authorizes summary deportation after the foreign vessel on which the alien seaman arrived has departed from the United States.

Statute Involved

The applicable provisions of the Immigration and Nationality Act are set forth in the Appendix to the Government's brief.

Statement

On December 23, 1964, the respondent, a citizen of Yugoslavia, arrived at Coos Bay, Oregon, as a member of the crew of a Yugoslav merchant vessel and was admitted into the United States as a crewman. On January 6, 1965 he advised an officer of the Immigration and Naturalization

Service at Portland, Oregon, that he feared political persecution if he returned to Yugoslavia and thereupon his landing permit was revoked and he was detained for deportation on his vessel. On January 7, 1965 respondent was offered an opportunity to seek a temporary parole into the United States by the District Director because of fear of persecution pursuant to the regulations (8 C. F. R. 253.1(e)) but on advice of counsel he refused on the ground, presented here, that he was entitled to have his claim of persecution considered in a statutory deportation proceeding by a Special Inquiry Officer (an independent quasi-judicial administrative officer) pursuant to Sections 242 and 243 of the Act. The District Director denied respondent the request and ordered that he be returned to his vessel for detention and deportation pursuant to Section 252(b) of the Act (A. 5-6). On the same day respondent filed suit in the District Court to restrain the Service from removing him from Portland without an opportunity to be heard on his claim (A. 4).

After January 6th respondent's vessel proceeded coastwise from Coos Bay, Oregon, to Los Angeles, California, from which it was scheduled to sail for Italy on or about January 16th, 1965 (Gov. Br. 5).

On January 18, 1965 the District Court denied respondent's claim but stayed any contemplated exclusion order pending an evidentiary hearing on the issue of persecution before the District Director's Deputy pursuant to the regulations (A. 28). On January 25th the District Director denied the application for parole because of fear of political persecution (A. 10-22). On January 27th respondent filed a second amended and supplemental complaint seek-

ing reversal of the District Director's decision and order of January 25th (A. 23-25).

On June 22nd respondent filed a petition for parole on account of anticipated religious and political persecution and requested a hearing before a Special Inquiry Officer (A. 35-36). On June 23rd the District Director denied the petition without a hearing on the ground that the issue of persecution had been decided and that the respondent was not entitled to a hearing before a Special Inquiry Officer (A. 36-38). On June 23rd respondent filed a complaint in a second action in the District Court alleging that he was entitled to a hearing before a Special Inquiry Officer (A. 38-42). On June 24th the District Court entered judgment against respondent (A. 44-45). On April 17, 1968 the Court of Appeals reversed on the ground that the District Director's order of June 23, 1966, after respondent's vessel had departed from the United States, was not authorized by Section 252(b) and that respondent is entitled to a hearing before a Special Inquiry Officer under Section 242(b).

Summary of Argument

The respondent was not merely paroled into the United States but was admitted and therefore he may not be excluded upon revocation of parole but must be removed by a deportation proceeding either in plenary form under Section 242, as he contends, or in a summary form under Section 252(b) as the Government contends.

The ordinary meaning of the language in Section 252(b) is that "such crewman" subject to summary deportation is one detained on board his vessel and "so deported" on his vessel. The predecessor provisions of the 1917 and

1924 Acts also contemplate plenary deportation proceedings unless the crewman is deported on the vessel on which he arrived.

In the absence of provision for a hearing in the regulations or administrative practice the courts invariably ordered evidentiary hearings even in cases relied on by the Government in which summary deportation after such a hearing has been upheld. But the proper procedure under the correct construction of the statute is to limit summary deportation to the arrival vessel and after its departure to grant plenary deportation hearings in all cases.

In the recently adopted Protocol and Convention Relating to the Status of Refugees the Government of the United States undertakes the express treaty obligation that expulsion of a refugee (which respondent claims to be) shall be only pursuant to due process of law after an opportunity to submit evidence and representation by counsel. Section 252(b) should be restrictively construed as respondent contends in order to comply with this international obligation.

ARGUMENT

The statute requires a full deportation hearing pursuant to Section 242.

Under the statutory scheme an alien, including an alien crewman, may be merely paroled into the United States temporarily so that upon termination of parole the case may be "dealt with in the same manner as that of any other applicant for admission" [Section 212(d)(5)], and he may be excluded without a deportation proceeding. But it is significant in this case that the statute, and perforce

the administrative practice, also contemplate that the alien crewman may be *admitted*, and not merely paroled, into the United States temporarily as provided in Sections 212(d)(3), 252 and 253 and requiring deportation proceedings for removal. The regulations recognize the distinction in that 8 C. F. R. Part 252 refers to "Landing [Admission] of Alien Crewmen" and Part 253 refers to "Parole of Alien Crewmen". This distinction remains between aliens who have not been admitted and may be excluded, and aliens who have been admitted and may be expelled only by a statutory deportation proceeding. *Leng May Ma* v. *Barber*, 357 U. S. 185; *Wong Hing Fun* v. *Esperdy*, 335 F. 2d 656, cert. den. 379 U. S. 970; cf. *U. S. ex rel. Paktorovics* v. *Esperdy*, 260 F. 2d 610 (2nd Cir. 1958).

The respondent crewman was admitted into the United States and, therefore, he is entitled to a statutory deportation proceeding to accomplish his expulsion either by summary deportation contemplated by Section 252(b) on the vessel on which he arrived or by a full deportation proceeding under Section 242. The Government contends that commencement of the summary proceeding before the ship sails is sufficient to satisfy the statute. The court below has held, correctly we submit, that after the ship has sailed a full deportation hearing before a special inquiry officer is required.

The distinction between the summary procedure and the full procedure is not merely formal but is substantial particularly where as here the issue is not whether the seaman has overstayed the period for which he was temporarily admitted but is the disputed factual question whether the crewman would be subject to political persecution if returned to Yugoslavia. Under the summary deportation

procedure the alien crewman receives a decision from the district director who is the principal immigration officer in a particular geographical district charged with enforcement of the immigration laws and officially concerned with execution of the policy of the Immigration and Naturalization Service that alien seamen admitted at ports within his district be required to leave with their vessels. It is understandable that this policy will be very much in the district director's mind in determining whether an alien crewman's claim of political persecution is sustained on evidence which in the nature of things can never be conclusive. In a full deportation hearing under Section 242, however, the alien crewman obtains a determination of this factual issue by a special inquiry officer who is not officially concerned with enforcement of Service policy in respect of crewmen but only with a quasi-judicial determination of the issues presented by the evidence on the record in the hearing before him including the evidence on the issue of political persecution. The Court and Congress have recognized the important role of the special inquiry officer in deportation proceedings. *Sung* v. *McGrath*, 339 U. S. 33; Section 242(b).

It is submitted that the language of the statute, the legislative history, the judicial authorities and other considerations support the decision of the court below.

1. Section 252(b), the only authority for summary deportation as an express exception to the full deportation "procedure prescribed in Section 242", provides in full:

> "Pursuant to regulations prescribed by the Attorney General, any immigration officer may, in his discretion, if he determines that an alien is not a bona fide crewman, or does not intend to depart on the

vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a)(1), take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States and at the expense of the transportation line which brought him to the United States. Until such alien is so deported, any expenses of his detention shall be borne by such transportation company. Nothing in this section shall be construed to require the procedure prescribed in section 242 of this Act to cases falling within the provisions of this subsection."

The ordinary and natural meaning of this language is that "such crewman", subject to summary deportation, is one detained on board his vessel and "so deported" on his vessel.

This interpretation of Section 252(b) is supported by the related statutory provisions based on the presence in the United States of the vessel on which the crewman arrived. For example, Section 252(a) distinguished between (1) crewmen such as respondent admitted for the duration of the vessel's stay in port and (2) crewmen admitted for 29 days to depart on another vessel. Section 252(b) deals only with the first class of crewmen admitted for departure with their vessels, as was respondent, and subjects them to summary deportation. Crewmen of the second class, admitted to depart on another vessel, are not subject to summary deportation under Section 252(b): *U. S. ex rel. Kordic* v. *Esperdy*, 386 F. 2d 232, 237 (2nd Cir. 1967).

Section 254 contemplates that a vessel shall not be granted customs clearance to leave port until bond is provided to pay any fine for failing to detain on board or deport designated crewmen or until expenses are guaranteed to pay the costs of deportation on another vessel if the Attorney General decided on that course. Thus the statutory provisions indicate that the summary deportation procedure is related to deportation on the vessel on which the crewman in question arrived.

2. The available statutory history supports the view that summary deportation is limited to the vessel on which the crewman arrived. Section 252(b) was preceded by Section 20(a) of the Immigration Act of 1924, 43 Stat. 164, which provided a fine of $1,000.00 for failure to detain or deport a seaman employed on the vessel if required to do so. Section 20(c) provided for deportation at the expense of the arrival vessel on another vessel if deportation on the arrival vessel involved undue hardship to the alien. These provisions contemplated deportation on the arrival vessel as the ordinary and usual procedure.

Section 20(d) of the 1924 Act repealed Section 32 of Immigration Act of 1917, 39 Stat. 896, which had provided a penalty for negligent failure to detain on board or deport any alien employed on the vessel when requested to do so by immigration authorities. Section 33 of the 1917 Act permitted alien crewmen intending to ship foreign on another vessel to land pursuant to the regulations of the Attorney General. Section 34 provided that an alien seaman landing contrary to the provisions of the Act could be arrested within three years and deported pursuant to the general

deportation procedure provided by Section 20 of the Act.[1] All of these provisions of the 1917 and 1924 Acts appear to contemplate the usual deportation procedure applicable to all aliens unless the crewman is detained on board and deported on his vessel.

The present 1952 Act is based upon the Senate Judiciary Committee Report on "The Immigration and Naturalization Systems of the United States" (Report 1515, 81st Cong. 2d Sess.) which reviews the administrative problems under the 1917 and 1924 Acts and discusses at some length provisions applicable to seamen (pages 545 to 558). This report expresses conclusions and recommendations in respect of seamen later incorporated in Section 252 including the provisions for temporary admission for the period the vessel remains in port not to exceed 29 days or for a separate period not to exceed 29 days if the seaman intends to depart on another vessel. The report then goes on to recommend a provision which became Section 252(b) by stating as follows (page 558):

> "Authority should be granted to immigration officers in a case where the alien crewman intends to depart on the same vessel on which he arrived, upon a satisfactory finding that an alien is not a bona fide crewman, to revoke the permission to land temporarily, to

[1] Crewmen arriving after enactment of the 1924 Act were held not entitled to the special three year statute of limitations on deportation provided for crewmen by Section 34 of the 1917 Act but were held subject to deportation without such limitation under the general provisions of the 1924 Act. *U. S. ex rel. Stapf* v. *Corsi*, 287 U. S. 129; *Philippides* v. *Day*, 283 U. S. 49. In this respect also crewmen were treated like all other aliens for purposes of deportation.

take the alien into custody, and to require the master of the vessel on which he arrived to detain him and remove him from the country."

It is submitted that this statement, in accord with the statutory history generally, supports the interpretation of Section 252(b) adopted by the court below.

3. The course of judicial decision also supports the court below. In the case of first impression, *U. S. ex rel. Szlajmer* v. *Esperdy*, 188 F. Supp. 491 (S. D. N. Y.), the Government argued that the temporarily admitted Polish crewman who claimed political persecution should be treated either as a parolee entitled to no hearing on the issue of persecution under Section 243(h), applying *Leng May Ma* v. *Barber, supra*, or as a summary deportee under Section 252(b) and equally entitled to no hearing on the issue of persecution. The District Court ruled that the admitted crewman plainly was not a parolee and as an admitted alien was entitled by construction of the statute to a hearing on the issue of persecution.

The Government did not appeal this decision but sought to nullify it by a new regulation (Section 253.1(e), 26 F. R. 11797, effective December 8, 1961) attempting to transfer the alien without a hearing from the status of an admitted alien entitled to a hearing on the issue of presecution to the status of a parolee not entitled to such a hearing under *Leng May Ma, supra*. The regulation (Gov. Br. App. 46) provided in effect for automatic revocation of temporary admission upon a claim of persecution and then parole into the United States if the claim was allowed or return of the crewman to his vessel if the claim was rejected and

parole not authorized. The regulation made no provision whatever for the hearing which the Court in *Szlajmer* ruled was the statutory right of the alien.

The new form of this regulation[2] (Section 253.1(f), 32 F. R. 4341, effective March 22, 1967) is illuminating because it sets forth the past practice under the original form of the regulation applied in this case and makes clear the Government's adherence to the position that the admitted crewman is to be treated like a paroled crewman and denied any "hearing" in the administrative law or constitutional law sense of that term and given merely an "interview" or an "interrogation". There is no provision in either the original or expanded form of the regulation for a hearing or for the presence of counsel or admission of evidence by the crewman.

Indeed it appears to have been the practice to deny a hearing and then grant some kind of a hearing only in cases in which the crewman requests the court to direct a hearing. In the reported cases, including this case and the companion *Vucinic* case (App. 28), the courts approved the administrative proceeding only after correcting the denial

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[2] Section 253.1(f) (not printed in Gov. Br. App. 46 because stated to be immaterial) reads as follows: "Any alien crewman refused a conditional landing permit or whose conditional landing permit has been revoked who alleges that he cannot return to a Communist, Communist-dominated, or Communist-occupied country because of fear of persecution in that country on account of race, religion, or political opinion shall be removed from the vessel or aircraft for investigation. Following the interrogation the district director having jurisdiction over the area where the alien crewman is located may in his discretion authorize parole of the alien crewman into the United States under the provisions of Section 212(d)(5) of the Act. If parole is not authorized the crewman shall be returned to the vessel or aircraft on which he arrived in the United States." This regulation contemplates deportation on the arrival vessel.

of a hearing and ordering a hearing. *Glavic* v. *Beechie*, 225 F. Supp. 24, 25; *U. S. ex rel. Kordic* v. *Esperdy*, 274 F. Supp. at 875.[3] Thus we have an administrative practice on the difficult factual issue of political persecution in which a temporarily admitted crewman who claims persecution automatically is relegated to the position of an alien outside the United States interrogated as an applicant for parole into the United States and, without counsel or a hearing, returned to his vessel. It is only when he obtains counsel and judicial scrutiny of his interrogation that he is offered a semblance of a hearing with counsel present and opportunity to present evidence. This is the short shrift a crewman receives in a situation in which the published regulation does not provide for a hearing, presence of counsel or an opportunity to present evidence.

In *Glavic* v. *Beechie, supra,* affirmed *per curiam* 340 F. 2d 91 (5th Cir. 1964), one Judge dissenting, the court thought the hearing it ordered at the crewman's request was sufficient to satisfy the statute and constitutional standards although not before a special inquiry officer. And after *Kordic, supra,* received the hearing the district court directed, the court then concluded that the new regulation provided a basis for distinguishing its former *Szlajmer* decision and that the proceeding was sufficient and whether it was an interview or a hearing "makes no real difference . . ." 276 F. Supp. 1, 3. The Court of Appeals affirmed, 386 F. 2d 232, following *Glavic,* and stating that the hearing that the crewman finally received on court order was essentially fair. The court in part based its conclusion

[3] The district court noted (p. 874 n. 1) that the immigration officer had asserted that the interview was like a primary inspection of an alien seeking admission at which an attorney was not entitled to be present (Sec. 235(a) of the Act).

on the view that by accepting the permit to land temporarily, conditioned on agreement to deportation pursuant to Section 252(b), the crewman waived any right to a full scale deportation proceeding. This basis for a decision however seems questionable in two respects. It begs the question presented here which is whether Section 252(b) applies at all after the arriving vessel sails foreign. It is difficult to say what a crewman waived, if anything, until the scope of Section 252(b) is finally determined. Crewmen certainly do not by the general language of the permit knowingly waive a hearing before a special inquiry officer on the issue of persecution. Moreover, the court relies for this waiver argument on its decision in *U. S. ex rel. Stellas* v. *Esperdy*, 366 F. 2d 266, in which the judgment was vacated and the case returned to the Service for a hearing which had not been granted initially. 388 U. S. 462. It is submitted that the court below and *Szlajmer* correctly construe Section 252(b) and *Glavic* and *Kordic* do not.

4. A. The Government first argues (Br. 14-26) that narrow construction of Section 252(b) by the court below would frustrate the purpose of this new section to prevent abuse of shore leave by seamen. Concededly, crewmen whose permits are not revoked until after their vessels have departed and crewmen admitted to depart on other vessels are not subject to the summary deportation procedure (Gov. Br. 20). There is no basis in the statute or its legislative history to conclude that Congress was not content to restrict the summary procedure to crewmen who could be deported on their own vessels and leave crewmen who could not be deported on their own vessels in the same category as crewmen whose permits were revoked after

their vessels departed or crewmen admitted to depart on other vessels. The policy of Section 252(b) is not frustrated by limiting it to crewmen deportable on their own vessels because the policy is so limited and all other overstayed crewmen are dealt with under the general deportation procedure.

The Government argues (Br. 25-26) that a full deportation hearing and judicial review would render the summary deportation procedure useless. But it must be answered that the unavoidable delay in these cases is due in the first place to refusal of the Service to give crewmen anything but an interview or an interrogation until the courts order evidentiary hearings (App. 28). Administrative delay at present is due to efforts to resolve the legal question whether such a crewman is entitled to a hearing before a special inquiry officer. Furthermore, the right to ultimate judicial review on the grave issue of political persecution is more important than summary deportation of the relatively few seamen who claim political persecution.

The statutory purposes of summary deportation are sufficiently realized in the great majority of cases in which crewmen indicating a disposition to overstay are deported on their vessels. Appropriate control of crewmen does not require application of that summary procedure to the occasional crewman who raises an issue of political persecution which cannot be determined before his vessel sails.

B. The Government next argues (Br. 27-33) from the statutory text that "cases falling within the provisions" of Section 252(b) include all cases in which crewmen's temporary permits are revoked before their vessels depart even though summary deportation follows departure

of the vessel. But the language of Section 252(b) in respect of detention of a crewman on board, or elsewhere if detention on board is not practicable (probably because not sufficiently secure), and detention and deportation at company expense throw no light whatever on legislative intent in respect of summary deportation after the vessel has sailed foreign. Deportation, whether summary or plenary, is in any case at the transportation company's expense. Section 254(c).

The Government then argues (Br. 34-35) that a stricter policy on granting shore leave might follow approval of the decision of the court below. But Congressional intent cannot be determined on the basis of future shore leave policy to offset a liberal construction of the statute. If the Government construction is not adopted an amendment to adopt the Government's view may be proposed or conceivably the Government may choose to reform its regulations and administrative practice to provide for a prompt evidentiary hearing upon a seaman's claim of political persecution (without awaiting a court order directing such a hearing) and in cases where the vessel has sailed foreign before conclusion of the proceeding to provide such a hearing before a special inquiry officer.

C. Lastly the Government argues (Br. 35-38) that since a hearing before a special inquiry officer on a political persecution issue is required not by the language of the statute but only by regulation it is both permissible and appropriate to exclude from the benefit of the regulation the one class of crewmen who request political asylum before their vessels sail foreign. But that suggestion does not meet respondent's legal contention that after his ship

sails he is no longer subject to summary deportation but entitled to a plenary deportation hearing before a special inquiry officer on all issues, including the issue of political persecution, as are crewmen whose vessels sail before revocation of their temporary permits or crewmen admitted to depart on other vessels. The change in the regulation to provide that the issue of political persecution as well as other issues in a plenary deportation proceeding shall be determined by the special inquiry officer means that all aliens, including respondent, entitled to a plenary deportation hearing are entitled to have the issue of political persecution decided by a special inquiry officer.

5. On November 1, 1968 (Dep't of State Bull., Vol. LIX, No. 1535, p. 538) the United States acceded to the Protocol Relating To The Status Of Refugees and became obliged to carry out the provisions of the Protocol and the Convention Relating To The Status Of Refugees (Senate Executive Report No. 14, 90th Cong., 2nd Sess. (Sept. 30, 1968). Article 32 of the Convention provides that the Contracting States shall not expel refugees lawfully in their territory save on grounds of national security or public order and that expulsion shall be only pursuant to a decision reached in accordance with due process of law and the refugee shall be allowed to submit evidence to clear himself. Article 33 provides that no Contracting State shall expel or return a refugee to the frontiers of territories where his freedom would be threatened on account of his political opinion.[4] Article 1 of the Convention, as amended

[4] Article 32 provides "1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except

by Article I of the Protocol defines the term "refugee" as including any person who owing to well-founded fear of political persecution is outside the country of his nationality and unwilling to avail himself of its protection.[5]

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where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary."

Article 33 provides "1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

[5] Article 1 of the Convention provides in part: "A. For the purposes of the present Convention, the term "refugee" shall apply to any person who: * * * (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

Article I of the Protocol provides in part: "* * * 2. For the purpose of the present Protocol, the term "refugee" shall except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and * * *" and the words "* * * as a result of such events", in article 1A(2) were omitted."

The Protocol and Convention do not provide that they shall apply only to refugees entering the territory of the Contracting State after its accession to the Convention or Protocol and indeed their texts and the refugee situation throughout the world which called for the adoption of the Convention and Protocol make it clear that these treaties are intended to apply to refugees already on the territory of the Contracting State. Similarly no exception is made in either the Convention or the Protocol exempting from Articles 32 and 33 of the Convention cases in which expulsion proceedings have been commenced prior to the accession to the Protocol. It seems clear therefore that the United States has undertaken by solemn treaty obligation that the expulsion procedures apply to the respondent and shall conform to the requirements of Articles 32 and 33. It is submitted that the application of these treaty provisions to the present case requires the determination that respondent, temporarily admitted to the United States and claiming refugee status, is entitled to a hearing on that issue under the statutory procedure provided by Section 242(b) of the Act and cannot be relegated to the "interview" or "interrogation" procedure without violating due process requirements of Article 32 of the Convention.

CONCLUSION

The practical considerations of control of shore leave of alien crewmen, so completely committed to the discretion of the Service, are substantially satisfied even if summary deportation is restricted to the arrival vessel. In the relatively few cases in which the claim of political persecution cannot be fully determined before the arrival vessel sails no substantial disruption of foreign shipping is caused by giving the crewmen involved plenary deportation proceedings and deporting them on other vessels if they fail to establish political persecution. Section 252(b) should not be stretched to extend summary deportation to cases not plainly within the statute in order to deprive crewmen making the grave claim of political persecution of an adequate hearing before a special inquiry officer. The important individual rights involved should not be sacrificed to satisfy a baseless apprehension that a plenary instead of a summary deportation hearing after the arrival vessel has departed will somehow disrupt international shipping.

The judgment of the Court of Appeals should be affirmed.

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January 1969

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 297

IMMIGRATION AND NATURALIZATION SERVICE,

Petitioner,

v.

VELJKO STANISIC,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

Opinion Below

The opinion of the court of appeals (A. 61-75) is reported at 393 F. 2d 539.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petitioner's Brief.

Restatement of Question Presented

Whether an alien seaman with a valid landing permit is entitled to a full and formal hearing and ordinary deportation proceedings under Section 242 of the Immigration and Nationality Act on the issue of asylum to avoid persecution by reason of religion or political opinions when his landing permit is revoked because he in good faith sought asylum, and his ship has departed from these shores pending the final order on summary hearing and deportation proceedings under Section 252 (b) of the Immigration and Nationality Act.

Statutes and Regulations Involved

In addition to the Statutes and Regulations set forth in the Petitioner's Brief, the following should be added:

1. Excerpts from Yugoslav Laws (A. 47-58).
2. Protocol relating to the Status of Refugees, acceded to by the United States, Nov. 1, 1968 (Appendix, *infra,* pp. 31-37).
3. Convention Relating to the Status of Refugees dated July 28, 1951 (Appendix, *infra,* pp. 29-30).

Counter-Statement

The respondent, Veljko Stanisic, a native Yugoslav citizen, now aged 33 years, and married since 1967 to a citizen of the United States, arrived as a crewman at Coos Bay, Oregon on a Yugoslav flag vessel M/V Sumadija on or about December 23, 1964 (A. 10). He was given a landing permit as a D-1 crewman and came ashore and entered the

United States several times. On or about January 6, 1965 he presented himself with a relative to the Immigration Service at Portland, Oregon and in good faith sought asylum on the ground of persecution (A. 5, 10). His application was purportedly treated as a petition for parole under 8 C.F.R. 253.1(e). In the course of the interview Stanisic said he did not intend to return to the ship, and the District Director pursuant to the provisions of Section 252 (b) took him into custody as a mala fide seaman, and revoked his landing permit (A. 5, 7).

Stanisic had not had any opportunity yet to show his reasons and evidence of persecution. No lawyer had been consulted. He had acted in good faith expecting fair treatment.

The following morning his relative contacted Gerald Robinson, a Portland attorney with considerable experience in immigration matters. The affidavit of Gerald Robinson filed that day tells the story.[1] On such short notice the respondent's attorney refused to proceed with a hearing on the merits of the question of physical persecution, on the ground that no adequate time for preparation and sum-

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[1] "That I am an attorney for the above named Petitioner; that I was retained about 11:00 o'clock A.M. on January 7, 1965 by Petitioner's friends and/or family; that I filed a formal appearance as attorney for Petitioner at the Immigration and Naturalization Service about Noon on that day; that I am advised by Respondent ALFRED A. URBANO that he intends to deport Petitioner to the SS SUMADIJA without the opportunity of a hearing and before Petitioner can consult privately with me as his attorney; that at about 3:00 o'clock P.M. on January 7, 1965, agents of the Immigration and Naturalization Service attempted to interrogate Petitioner before he had had a chance to consult with counsel and with only 15 minutes notice to counsel to be present at said interrogation; that I am informed and belief [sic] that unless Petitioner's request for a restraining order and injunctive relief is granted, Petitioner will be in danger of life and limb."

moning of witnesses and gathering of evidence from far and near had been given, and further that he was entitled to a hearing before a Special Inquiry Officer (hereafter designated SIO). An order denying parole was immediately entered by the District Director and ordering him removed to his vessel (A. 5-6).[2]

Respondent's counsel thereupon the same day applied to the United States District Court for the District of Oregon for an injunction and a hearing (A. 34). This was amended January 11, 1965 to include a request for a hearing under section 242 (b) (A. 6-9). On January 18, 1965 the court ordered the matter referred to the District Director for a hearing on the question of *physical* persecution (A. 9).[3] The following day, January 19, 1965, Stanisic did present evidence to the District Director.[4] And on January 26, 1965 the District Director denied Stanisic's application for parole on the ground he failed to establish *physical* persecution (A. 10-22). Stanisic then filed a Motion for Review by the Court because of expressed and open bias of the District Director (A. 23-25). The District Director moved for summary judgment, which the court granted on July 20, 1965 (A. 26-34).

The expulsion of Stanisic was stayed pending an application to Congress for a private bill. In the meantime the statute was changed on October 3, 1965 no longer to require

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[2] Ordinarily, and as argued by petitioner, this should have closed the case, and this should be the sum total of the procedure and constitutional protection which any D-1 crewman should expect at the hands of American authorities.

[3] On or about January 16, 1965 the respondent's ship left American waters for Italy. See note 4 on page 5 of Petitioner's brief.

[4] This testimony is part of the Record lodged with the Court. A summary thereof (Appendix, *infra*, pp. 21-28) is attached hereto for convenience.

physical persecution as a ground for asylum, but to allow in lieu thereof "persecution on account of race, religion, or political opinion".[5] When the Congressional bill was turned down in June 1966 the District Director on June 21, 1966 ordered Stanisic to appear about 70 hours later on June 24th for deportation to Yugoslavia by airplane. A petition for parole (A. 35-36) was filed June 22, 1966 requesting:

1. A stay of deportation to Yugoslavia on the basis of anticipated persecution on account of religious and political opinion, and on account of pending litigation in Lane County, Oregon;

2. A hearing before a Special Hearing [sic] Officer of the Immigration Service; and

3. In the alternative, in the event of denial of the petition, leave to depart voluntarily from the United States at his own expense.

This petition was denied by the District Director without hearing on the new issues (A. 36-38). The same day, June 23, 1966, Stanisic filed in the United States District Court for the District of Oregon a complaint, Case No. 66-333 (A. 38-44) seeking a restraining order and relief under section 243 (h) on the ground of persecution on account of *religion or political opinion,* and such other and further relief as might be appropriate. A hearing was held early the next morning and the court denied the relief sought on the ground of *res adjudicata* in Case No. 65-10 without considering the question presented to it (A. 44-45).

While the appeal was pending Stanisic filed on February 9, 1968 a motion requiring the United States to ascer-

[5] Act of Oct. 3, 1965 (79 Stat. 918).

tain through diplomatic representations details as to the charges that might be made against him if he be returned to Yugoslavia, the maximum punishment that might be inflicted, and guaranties that he would not be persecuted if returned to Yugoslavia or jailed there and that he would have humane treatment and access to legal counsel and family if returned to Yugoslavia. And Stanisic further moved that if ordered deported any deportation be suspended pending a receipt of a satisfactory answer and guaranties from the Yugoslav Government (A. 59-60). This motion was denied on April 17, 1968 (A. 61).

The same day the Court of Appeals reversed the decision of the District Court (A. 61-76). It ruled on a careful analysis of the statutes that, because the District Director's order of June 23, 1966, denying Stanisic's application for relief from deportation, had been entered after his ship had left American ports, expulsion under section 252 (b) was no longer authorized. The court then held that Stanisic could not thereafter be deported except in accordance with the detailed administrative procedure of section 242 (b).

SUMMARY OF ARGUMENT

Taken in context with a view to the purpose of the legislation, section 252(b) procedure is designed to provide a swift remedy while the crewman's ship is still in port; but when the ship leaves the need for haste ends. One is weighing the Constitution against the inconvenience to shipping. Where the claim of asylum is made in good faith prior to the revocation of his landing permit, a section 242(b) hearing before an impartial judicial officer should begin.

If, however, this statutory construction should fail, the guaranties of due process of law require that Stanisic be given a fair and impartial hearing with right of judicial review, something which has been denied to him so far on the question of asylum and persecution. There is no clear and convincing evidence warranting deportation or a denial of asylum. Thus, due process has been denied him.

In addition, treaty law binding on the United States gives protection to a refugee unwilling to return to his country because of well-founded fear of being persecuted for reasons of religion, membership in a particular social group, or political opinion. No refugee, including a crewman, can be compelled to go back to a country where he reasonably fears persecution.

In essence, this case is weighing due process of law against shipping, while at stake are a man's life and limb. With the emphasis on human rights, Stanisic is entitled to something better than he has received at the hands of the District Director. This entails a section 242 (b) hearing before an impartial judicial officer. Anything less is a denial of due process and of human rights.

ARGUMENT

I.

An analysis of the statute, as done in the opinion of the Court of Appeals (A. 61-75), shows that the purpose of section 252 (b) of the Immigration and Nationality Act is to provide "a specific remedy for a particular problem" when the crewman's ship is still in port, but "the justification for quick resolution of the problem departs with the vessel".

Petitioner admits (Brief, 20) that not all alien crewmen are subject to summary 252 (b) procedures, and these fall into several broad categories: (1) those crewmen who on landing are permitted to depart on another ship, (2) those who jump ship with no permit at all, (3) those whose ship sails before the landing permit is revoked. In all of these cases the alien crewman may be deported only in accordance with section 242 (b) procedures. This is so even though their defection or absence may have had adverse effects on the movement of vessels.

In its efforts to plug a loophole Congress provided that summary section 252 (b) procedures should be employed only if it can be done by returning the crewman to his own vessel or by arrangements made prior to departure of that vessel for deportation on another vessel. Section 254 (c) implements section 252 (b) but implies in any reasonable interpretation the continued presence of the vessel in the American port while the summary procedures are invoked. Haste is the keynote, lest shipping be delayed.

Yet, as the Court of Appeals pointed out, "the purpose of section [252 (b)] is palliative, not punitive. Its object

is to provide a specific remedy for a particular problem, not to deprive alien crewmen of rights available to others[8a] simply to punish them. If an alien crewman is denied the benefits of section [242] though the exigency justifying summary deportation has passed, great loss is inflicted on the crewman without purpose" (A. at 74-75). Most crewmen concede their deportability, but after their ship is gone they are still legally permitted under section 242 proceedings to depart voluntarily to a country of their own choice. Matter of *Vara-Rodriguez*, 10 I&N 113 (1962).

Petitioner argues (Brief 33-35) that the statutory construction given by the Court of Appeals would create a serious problem for foreign shipping. (American shipping, employing U.S. citizens as crewmen would not be affected.) But as pointed out in Stanisic's brief in opposition to the petition for writ of certiorari (pp. 7-9 thereof) the problem is *de minimis* statistically, and is far outweighed by the human values of life and limb involved and the world image of American justice and fair play.

Nothing is gained, except punishment, by haste under section 252 (b) after the ship has left American waters. As in the case at bar, extreme injustice can be done by failing to give the crewman a hearing before an impartial officer of his claim of persecution.

By reading the two procedures in context and in light of the facts of this case, Congress cannot have intended and did not contemplate such an inequitable result.

The Supreme Court, addressing itself to statutory construction in an immigration case even involving fraud laid

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[8a] Such as the three categories of crewmen falling under section 242 (b), *supra*.

down in *Immigration Service* v. *Errico*, 385 U.S. 214, 87 S. Ct. 473, 17 L. ed. 2d 318 (1966), the following rule

> "Even if there were some doubt as to the correct construction of the statute, the doubt should be resolved in favor of the alien. As this Court has held, even where a punitive section is being construed:
>
> "'We resolve the doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment or exile. . . . It is the forfeiture of misconduct of a residence in this country. Such forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used. . . .'"

The statutory scheme must never lose sight of the humanitarian goal, regardless of how the alien came to these shores. This is woven into the Constitution.

The weakness of a summary section 252 (b) hearing before a District Director who is arresting officer, judge and jury and executing officer is shown in this case where the District Director claimed he was proceeding under 8 C.F.R. 253.1.(e)[*] addressed to his discretion to ascertain "fear of persecution—on account of race, religion, or political opinion" (A. 5-6), but ended considering only "*physical* persecution" (A. 10-22), the term used in section 243 (b) prior to its amendment later in 1965. Physical persecution was and is the basis on which the Government

[*] For provisions, see petitioner's brief, p. 46.

seeks to deport Stanisic. *Vucinic* v. *United States Immigration and Naturalization Service*, 243 F. Supp. 113 (D. Ore. 1965).

When, therefore, the ship is gone the summary and hurried section 252 (b) procedures should be dropped[7] and the more careful and impartial hearing before a SIO (a judicial officer) should be begun. Especially is this true where the crewman in good faith applies prior to the revocation of his landing permit and claims asylum.

II.

The Constitution of the United States, and particularly the Fifth Amendment requiring due process of law, require clear and convincing evidence to support an administrative decision and ultimately compel judicial review of any arbitrary or capricious decision.

Broader and more fundamental than the dispute over statutory construction is the question whether the Constitution (Fifth Amendment) and its guaranties of due process of law have any bearing on the decision of this case.

A man's life and limb are at stake, not to mention a probable disproportionate prison term in the alternative (see pp. 17-18, *infra*). Stanisic had been threatened with and promised life imprisonment if he attempted to leave Yugoslav jurisdiction again after his unsuccessful flight in 1957 (A. 13). These were the matters to be considered together with corroborating evidence of persecution of his family, 30 of whom had been killed as anti-Communists and Chetniks. The District Director on January 7, 1965, acting as prosecutor, judge, jury and executing officer de-

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[7] In the Stanisic case only a few minutes were involved.

manded that Stanisic prove his case on a few hours' notice, and when the crewman obtained legal counsel he had not had more than a few minutes to consult with his attorney. This would have constituted the full course of the summary procedure which the petitioner seeks to sustain.

When Stanisic sought the intervention of the District Court a further hearing was again ordered solely on the question of *physical* persecution, but still before the District Director against whom charges of bias and prejudice were subsequently pressed unsuccessfully. The evidence (summarized in the Appendix hereto, pp. 21-29) was offset by nothing except the District Director's official notice of a relaxed political climate in Yugoslavia (A. 21-22). That this "official notice" was unwarranted is shown by the imprisonment of a university lecturer for urging a multiparty system within the Communist framework (see excerpt from The Oregonian, September 24, 1966, in the Appendix hereto, p. 38), while the former Communist vice-president of Yugoslavia, Milovan Djilas, languishes in prison for his exposure of the Communist bureaucracy in Yugoslavia. Shortly afterward the Yugoslav embassies and consulates were bombed simultaneously in the United States and Canada. In the face of such events "official notice" amounts to nothing of evidentiary value. In *Radic* v. *Fullilove,* 198 F. Supp. 162 (DC ND Calif. ND, 1961) in its footnote at 164, the court said:

> ". . . In this case, the Hearing Examiner has weighed Radic's life against nothing (so far as the record shows), and amazingly has found that the latter outweighs the former."

As in the *Radic* case, secret evidence from the file of the Immigration and Naturalization Service was considered

in camera (A. 29) without the right of Stanisic or his counsel to examine or refute it. In the *Radic* case at page 165 the court went on to say:

> ". . . it is patent that plaintiff has not been afforded procedural due process here. Under our form of Government, the right to a hearing embraces not only the right to present evidence in support of one's position, but also a reasonable opportunity to know the claims of the opposing party with the privilege of seeking to refute those claims. . . ."

Thus, in the administrative hearing which the petitioner claims is all that Stanisic is entitled to, we have:

1. A hastily ordered hearing before a District Director on a serious question of persecution.
2. A hearing 12 days later at which hurriedly gathered witnesses testified strongly on behalf of Stanisic and his crewmate, Vucinic. No evidence was introduced on behalf of the Government or to sustain its position.
3. "Official notice" strongly tasting of bias and prejudice in light of news items then and subsequently published.
4. Uncontradicted testimony that Stanisic faces life imprisonment for attempting again to escape Yugoslavian jurisdiction.

And in the subsequent proceedings in the District Court, we have the secret review of administrative files with no right to examine or refute them.

The policy of the court with respect to deportation procedures has been laid down in *Woodby* v. *Immigration Service,* 384 U.S. 904, 17 L. ed. 2d 362, 87 S. Ct. 483 (1966):

"We hold that no deportation order may be entered unless it is found by clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true, . . ."

and in a footnote the court continued:

"This standard of proof applies to all deportation cases, regardless of the length of time the alien has resided in this country. . . ."

Clearly, Stanisic has been denied procedural due process.

III.

To the extent that Section 243(h) denies a D-1 crewman in good faith seeking asylum a fair and impartial hearing with right of judicial review, such denial is without justification and is unconstitutional under the due process clause of the Fifth Amendment.

The Government in its brief (Br. 36-38) argues that although under Section 242 Stanisic would have a statutory right to a hearing before a SIO, such right would not spill over by virtue of the statute to include consideration of a Section 243(h) request for asylum. But this is an administrative gloss having no basis in statute and certainly running contrary to the equities of this case. By means of fine lines of reasoning and administrative regulations and determinations the Government seeks to consign Stanisic to the mercy of the District Director. To the extent that the hearing under 8 C.F.R. 253.1(e) is conducted by the District Director it is the contention of Stanisic that it is an unconstitutional hearing. Due process and fair play require a genuinely impartial hearing, conducted with criti-

cal detachment in which the same person is not obliged to serve as both prosecutor and judge. Anything less than this not only undermines administrative fairness but also weakens public confidence in that fairness. *Wong Yang Sung* v. *McGrath, Attorney General,* 339 U.S. 33, 70 S. Ct. 445, 94 L. ed. 616 (1950).

The standards set forth in the Administrative Procedure Act[8] apply to Stanisic, and to the extent that in administrative regulations or interpretation any distinction has been made depriving him of the same rights as apply to any other alien involved in expulsion proceedings, it is a violation of the Administrative Procedure Act and is also unconstitutional.

IV.

Pursuant to the Protocol Relating to the Status of Refugees and the Convention Relating to the Status of Refugees protection is afforded Stanisic as a refugee unwilling to return to his country because of well-founded fear of being persecuted for reasons of religion, membership of a particular social group, or political opinion.

All treaties made under the authority of the United States becomes the supreme law of the land. Article VI, United States Constitution. On November 1, 1968 the United States acceded to the Protocol Relating to the Status of Refugees, approved by the United Nations General Assembly.[9] This protocol referred for definitions to

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[8] 60 Stat. 237, Ch. 324, 5 USCA §1001 et seq.

[9] Protocol Relating to the Status of Refugees, done at New York January 31, 1967; U.S. Dept. of State Treaties and other International Acts Series, No. 6577.

the Convention Relating to the Status of Refugees of July 28, 1951[10] (which had not been acceded to by the United States).

A refugee within the meaning of the Protocol is a person who:

> "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

Stanisic falls within this definition and is therefore entitled to the protection of the Protocol and by reference the Convention. These provisions and safeguards provide that no penalty shall be imposed for illegal entry from a territory where their life or freedom was threatened (Art. 31), a state shall not expel a refugee lawfully in its territory save on grounds of national security or public order, and such expulsion shall be only following a decision pursuant to due process of law (Art. 32), that such refugee shall have a reasonable time within which to seek legal admission into another country (Art. 32), and that no state shall expel or return a refugee to lands where his life or freedom would be threatened on account of his religion, membership of a particular social group or political opinion (Art. 33).

The harsh and unreasonable penalties facing Stanisic in Yugoslavia clearly put him in the category of "refugee"

[10] United Nations Document A/Conf. 2/108.

facing "persecution" if returned. The Government has so far refused to ascertain the probable charges he might face, and the Court of Appeals has sustained the Government (A. 59-61). But by examining Yugoslav law there are the following possibilities:

1. For applying to anybody in a foreign port other than the captain or Yugoslav consul (Yugoslavia 3, II, §12 at A. 47),—fine, confinement, and forfeiture of right to serve at sea (A. 48-49).

2. For unjustified absence from the ship (Yugoslavia 3, II, §14; IV, §§46-48 at A. 47-48),—fine, confinement, and forfeiture of right to serve at sea (A. 47-49).

3. For terminating work without notice or by abandonment (Yugoslavia 1, §32, at A. 50),—a fine (A. 50-51).

4. For unilaterally ceasing to work (Yugoslavia 4, §96 (3), (4)),—compulsory compensation to the labor organization in an amount equal to his anticipated income for the balance of the contract period (A. 51-52).

5. For committing an act aimed at overthrowing the authority of the working people, or undermining the economic foundations of socialism or breaking up the unity of the peoples of Yugoslavia (Criminal Code, Art. 100),—imprisonment of one to fifteen years, and possibly death and confiscation of property (A. 55, 52-53).

6. For any hostile activity against Yugoslavia by establishing contact with a foreign State or organization (Criminal Code, Art. 110),—imprisonment of one to fifteen years (A. 56, 52-53).

7. For escaping abroad for purposes of hostile activity, or creating a group to help escapees (Criminal Code, Art. 110),—imprisonment up to twelve years (A. 56).

8. For carrying on hostile propaganda breaking up the brotherhood and unity of the peoples of Yugoslavia or resistance to the decisions of the executive organs involved in security or defense, or maliciously or untruthfully representing the social-political conditions in Yugoslavia (Criminal Code, Art. 118),—imprisonment up to twelve years (A. 56).

9. For provocating [sic] national, racial or religious intolerance, hatred or discord in Yugoslavia (Criminal Code, Art. 119(1)),—imprisonment up to twelve years (A. 57).

10. For provocating [sic] national, racial or religious intolerance by insulting the citizens or otherwise (Criminal Code, Art. 119(3)),—imprisonment for one to fifteen years (A. 57, 52).

11. For the offense mentioned in item 5, *supra*, if it caused a threat to the security, the economic or military capacity of the State (Criminal Code, Art. 122), —imprisonment of not less than ten years, or death (A. 57-58).

12. For damaging the reputation of Yugoslavia or bringing it into derision (Criminal Code, Art. 174),—imprisonment of not less than three months (A. 58).

The vague language of Yugoslav law permits its arbitrary and extensive interpretation by the courts. Recent news stories from Yugoslavia bear this out. The fact still remains that the United States cannot show that Stanisic can return

without undergoing persecution for his political and religious beliefs. It is extremely doubtful that Stanisic would get fair play, and in view of the limited evidence at the hearing before the District Director (Appendix, pp. 21-28, *infra*) his fear was and is well-founded.

Therefore, by any reasonable applications of treaty law Stanisic should have due process of law, and in the event of unfavorable decision he shall not be returned to any country where he faces persecution. This is part of the supreme law of the land.

Finally, Stanisic cannot pass unnoticed the comment on page 38 of the Government's brief. Stanisic denies that he has been fully heard under the regulations with respect to persecution on account of religion or political opinion; the hearing, such as it was, before a biased and prejudiced District Director dealt only with the question of "physical persecution", although he purported to consider the broader case but failed to do so.

CONCLUSION

It is therefore respectfully submitted that the judgment of the Court of Appeals should be affirmed.

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APPENDIX

SUMMARY OF TESTIMONY IN THE CASES OF VELJKO STANISIC

and

VESELIN VUCINIC

TESTIMONY OF VELJKO STANISIC:

Veljko Stanisic was born in Pelev Brijeg, Montenegro, Yugoslavia, on August 25, 1935. He is unmarried, his father is deceased and his mother is still living. His father died June 23, 1964. Stanisic is of the Orthodox religion.

He attended four years of elementary school in Pelev Brijeg from 1945 to 1948 and then junior high school from 1948 to 1950. After that he went to high school from 1950 to 1955 in Kotor. From 1955 to 1956 he worked, having no money for further education. He was employed in the Post Office in Kotor and, thereafter, he went to an architectural school for seven months in Zagreb. In 1957 he worked as a teller in a bank. Again, he had no money to continue his education so he went into the army from March, 1958 to March, 1959. This was a school for reserve officers. He attained the rank of lieutenant and signed up with the merchant marine telegraph school where he attended from 1959 to 1960. He thereafter became a telegrapher and radio officer on Yugoslav merchant vessels.

Stanisic has several brothers and sisters, all born in Yugoslavia. One brother is a superintendent of a marine school in Kotor. Another is a farmer and a third brother is an army officer with the rank of lieutenant. Another brother is an assistant mechanic and another is attending technical school in Titograd. One sister is a student and two others are married.

Stanisic's father was an assistant to a priest of the Orthodox Church in Pelev Brijeg. He held this job up until World War II and he was removed by the Communists from this position. Thereafter he had his own small acreage which he worked in order to live.

Stanisic testified that his father was also a city clerk in Peley Brijeg for thirty years but when he was terminated by the Communists because of his anti-Communist views he received no pension.

Stanisic never belonged to any organizations, even the seamen's union, although dues are deducted from wages.

On December 23, 1964, Stanisic was a member of the crew of the Yugoslavian motor vessel *Sumadija* when it arrived at Coos Bay, Oregon, after a voyage from Vancouver, Canada. On January 4 he left the ship and called his cousin, Mike Toskovich in Eugene, who came to Coos Bay and took Stanisic and his fellow crewman, Veselin Vucinic, to Eugene. They stayed overnight and on January 6 Toskovich brought them to Portland to the Immigration Office.

The reason for leaving the ship was that he felt that the Communists were his enemies and that he did not believe in Communism. He stated that aboard the ship the Communist Party factions show seamen who are not Communist a rough time. But he had been ridiculed and accused of being a sympathizer with the Western Powers. If he had been returned to the *Sumadija* at the time of the hearing, he felt that he would be subject to verbal persecution aboard the ship although they would not kill him because they needed his services.

Stanisic stated that the government had closed all the churches in Montenegro as far as he knew, including the one in his hometown. He went to church in America whenever he could. He stated that most of the Catholic Churches are open in Yugoslavia but 80 per cent of the Orthodox Churches are closed.

Stanisic stated that in 1957 he tried to escape from Yugoslavia with a friend and attempted to reach Trieste. They were caught by some fishermen and returned and they were told that if they were ever caught again they would be sentenced to prison for life.

Stanisic stated that if he were returned to Yugoslavia he would be tried both as a deserter of the ship and because

he was an anti-Communist. He testified that he did not know whether they would just kill him or sentence him to life in prison. If he were returned, he would have to give up his profession and there would be no life for him in Yugoslavia.

Many other members of Stanisic's family have been persecuted and killed by the Communists. When he was six years old, Stanisic saw the remains of an uncle who had been killed by the Communist in Pelev Brijeg.

Stanisic's father had been beaten by the Communists and they had ransacked his house after World War II. The Communists had also harassed his brother, Blazo. On one occasion, the Communists wanted to shoot Stanisic's father but an old friend in authority interceded for him. Over thirty cousins and uncles were killed by the Communists during or after the war.

Stanisic said he had been raised in the Orthodox Church by his father who was a very religious man but since the Communists took over they had used the churches to stable cattle. Stanisic has never been convicted of any crimes in Yugoslavia.

The reason that his family had been persecuted by the Communists was that they belonged to the Chetnik group of anti-Communist partisans who were loyal to the king.

Stanisic tried to make it clear that if he were returned to Yugoslavia he would not only be punished for deserting ship but also they would take into account that he is anti-Communist, religious and that he might be an American spy and that he would be punished worse because of these factors than if he had only jumped ship.

TESTIMONY OF MR. "X":

This witness requested that his name be withheld because of fear of persecution of some of his family in Yugoslavia, if his testimony were made public.

The witness is 69 years old and is an American citizen having been naturalized in 1939. He was born in Yugo-

slavia near the town of Titograd which was then known as Podgroritza, in Montenegro. He came to the United States in 1914. He returned to visit Yugoslavia in 1920, 1929 and a third time from 1958 to 1963, when he went to try to help his parents whose property had been confiscated by the Communists. During that visit he was jailed for ten months on alleged black-market activities. During his time in jail, he was ill but the authorities refused him medical attention. While in jail he was acquainted with prisoners who were there for political reasons and he saw that they had been beaten, had teeth knocked out and had been tortured. Also, some political prisoners were killed in jail. While he could not specifically state what would happen to Stanisic and Vucinic if they were returned, he stated "If they go back it would be better if they die right here before they send them back." (Tr. 41).

The witness was acquainted with the Stanisic and Vucinic families in Montenegro. He considered them some of the best people in Montenegro and they were well thought of under the monarchy and were reputed to be anti-Communist. They had not faired well under the Communists and he understood that the Vucinic land had been taken over by the Communists.

He confirmed the attitude of the government as testified to by Stanisic with respect to the Orthodox Church. He was sure that Vucinic and Stanisic would be badly treated in jail if they were returned to Yugoslavia:

> "They would put them in jail and they do with them whatever they want. They club them. They break their arms. They break their ribs. They torture all kinds of —I never hear anybody do that before in all my life. They have no soul. They have no heart. They don't feel sorry for nobody, you know. They kill man just like fly." (Tr. 45)

TESTIMONY OF RADE DZANKICH:

Rade Dzankich testified that he presently lives in Eugene, Oregon and is employed by a logging company. He has

been in the United States since September 27, 1963. He was born February 16, 1929, in the town of Crnci near Titograd in Montenegro, Yugoslavia. He was raised and went to school in this area. He was paroled into the United States in New York September 27, 1963, pursuant to Section I of the Act of July 14, 1960.

He lived in Yugoslavia until 1949. At that time he belonged to a youth movement that was against the Communist government and he made his escape. He lived three months in the woods and tried to get across Albania where he was caught by the Albanian government. He was sent to jail in Albania until September, 1956. He then escaped and went back to Yugoslavia and tried to get to either Austria or Italy but was caught and spent three years in jail. He was in jail at Titograd, Kotor and Spuz. These areas are in Montenegro. He was sentenced because he had been a member of an anti-Communist organization known as the "R. O. Youths". This group had passed out literature against the government and were trying to obtain help from people who were hiding in the woods from the government. Fourteen other people were arrested with him and were lodged in jail.

During his imprisonment from 1956 to 1959, for two and one-half months he was in solitary confinement. He was beaten many times. They also starved him. He was tortured, in addition, by being forced to look at a fight until he passed out. He testified that other political prisoners are treated the same way in Yugoslavia.

He was acquainted with the Stanisic and Vucinic families in the Titograd area and said they were known to be anti-Communist and in favor of the Chetniks and the old government.

He said that the Communists had put Chetniks in work camps, jail and executed them, including his brother who was a Chetnik.

When his brother was alive and in the Chetnik army, his mother had taken him some food and clothes and the Communists had caught her and knocked out two of her teeth.

Dzankich confirmed prior testimony that the Communists had closed the Orthodox Churches and monasteries in the Titograd area and used them for stables. He said the Communists preach the philosophy that there is no God and no religion. He said that if Vucinic and Stanisic, being anti-Communist and religious, are now returned to Yugoslavia " . . . they would be better off if they were killed by the American government than be sent back. If they go back they will be tortured, punished." (Tr. 56).

Dzankich said that they would be treated differently from ordinary deserting seamen because of their political and religious beliefs. If they had been strong Communist Party members they would be forgiven. People who are members of the Communist Party if they commit a crime they are sentenced to jail, but their penalty is less severe than that which is invoked upon people who are anti-Communist, and are sentenced for the same crime.

Dzankich stated that in part his opinion as to what would happen to Stanisic and Vucinic was based upon what had been told him by a Yugoslav seaman who jumped ship in Italy, whom he had known.

He also stated that there was no publicity or public information released as to what is done with political prisoners.

Note: The Government offered no witnesses or evidence.

TESTIMONY OF VESELIN VUCINIC:

Veselin Vucinic was born February 1, 1937, in the village of Rogami in Montenegro, Yugoslavia. His mother is deceased and his father is 62 years old, lives in Rogami and is a retired forester, on a pension. He has three brothers who also live in Yugoslavia. One is an electrician, another is a student in Zagreb in a technical school, and the third is only 14 years old and does not work.

Vucinic has attended elementary school, junior high school and a technical school where he studied to be a cabinet maker, all schools being in Titograd in Montenegro.

He worked carrying lumber as a common laborer for about three years when he was 15 or 16 years old and as a cabinet maker for about a year for the government. He worked for his father in the woods for a month, in a mill for about two months, and then finally went into the military service.

He was drafted into the Yugoslav navy from March 15, 1957 to March 17, 1960, and served as a sailor. Finally, in 1961 he obtained a job with the Yugoslav Ocean Shipping Company as a sailor and has been working for them ever since.

Vucinic has a cousin in Buffalo, New York, whom he has never seen and he does not know his name or address. As far as he knows, he does not have any other relatives outside Yugoslavia.

Vucinic never belonged to any organizations, clubs or unions but he paid his dues to the seamen's union.

Like Stanisic, he arrived in Coos Bay, December 23, 1964, on the *M/S Sumadija* and on January 4, 1965, he went with Veljko Stanisic and his cousin to the Immigration Office in Portland requesting political asylum.

Vucinic states that if he went back to Yugoslavia " . . . they would torture me and the humility I would suffer would be unbearable. When I get there they would try me and I would be put into a jail cell where there is water and tortured and in due time be killed. I would rather be killed here than go back to await what is waiting for me." (Tr. 9).

This treatment he ascribed to his being anti-Communist. He stated that he had been anti-Communist ever since he had a sense of reasoning.

Vucinic stated that it is his desire to live in the United States and he has wanted to do so ever since he went to school and heard of freedom.

He stated that because he had been anti-Communist he received $6.00 a month less than the other ordinary seamen on the *Sumadija*.

In addition, because of his anti-Communism he suffered humiliation and abuse on the vessel.

Vucinic and Stanisic assisted a crewman on the *Sumadija* to desert the ship in British Columbia, Canada, shortly before leaving the vessel in Coos Bay, Oregon. Vucinic gave him $23.00. The deserting seaman was Ilja Glogovach, the Third Officer of the *Sumadija*.

Vucinic stated that he was of the Orthodox religion, and like Stanisic, he testified that the churches in his part of the country have been closed, most of them destroyed and used as stables. Vucinic testified that his father had been locked up in jail by the Communists and sentenced to hard labor. That after he was released he petitioned the government and a pension was granted about a year and one-half ago. The government also restored his citizenship which had been taken away when he was jailed from 1945 to 1948 or 1949.

His health now is very poor, his eyesight is also bad, as a result of the hard physical labor required of him in jail. He is not allowed to come aboard the ship to visit Vucinic when he is in port and the Communist authorities took away his father's land and house.

When Vucinic's father's land was confiscated by the government they reimbursed him 119,000 dinars (750 dinars to a dollar). Vucinic said that the property was worth much more than that.

Vucinic's younger brother was deprived of his money by the government for schooling because he was not a Communist.

Like Stanisic, Vucinic's family suffered at the hands of the Communists and at least one cousin was executed by the Communists because he tried to leave the country in 1945.

Vucinic says that anti-Communist in Yugoslavia or people who oppose Tito sometimes are killed or they disappear. Also, they may be tortured and forced to say things they did not say.

When Vucinic left the ship he went to stay with Stanisic's cousin, Mike Toskovich in Eugene, Oregon. He had no other place to go and that is why he did not jump ship in some other country.

CONVENTION RELATING TO THE STATUS OF REFUGEES

The Convention of July 28, 1951, Relating to the Status of Refugees (U.N. Document A/Conf. 2/108) provides in part as follows:

Article 16

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exception from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Article 31

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a

reasonable period and all the necessary facilities to obtain admission into another country.

Article 32

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particular serious crime, constitutes a danger to the community of that country.

APPENDIX I

Protocol Relating to the Status of Refugees

List of Parties to the Protocol

Algeria	Guinea	Senegal
Argentina	Holy See	Sweden
Cameroon	Iceland	Switzerland
Central African Republic	Ireland	Tanzania
Denmark	Israel	Tunisia
Finland	Liechtenstein	Turkey
Gambia	Malta	United Kingdom
Ghana	Nigeria	United States of America
Greece	Norway	Yugoslavia

TOTAL: 27

APPENDIX II

Protocol Relating to the Status of Refugees

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

Article I

General Provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and * * *" and the words "* * * as a result of such events" in article 1A(2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1B(1)(a) of the Convention, shall, unless extended under article 1B(2) thereof, apply also under the present Protocol.

Article II

Cooperation of the National Authorities with the United Nations

1. The States Parties to the present Protocol undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs

of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate forms, concerning:

(a) The condition of refugees;

(b) The implementation of the present Protocol;

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article III

Information on National Legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV

Settlement of Disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V

Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the

deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI

Federal Clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII

Reservations and Declarations

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by State Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declaration made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII

Entry into Force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX

Denunciation

1. Any State Party hereto may denounce this Protocol at anytime by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X

Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating thereto.

Article XI

Deposit in the Archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.

In accordance with article XI of the Protocol, we have appended our signatures this thirty-first day of January one thousand nine hundred and sixty-seven.

U THANT
Secretary-General of the United Nations

A. R. PAZHWAK
President of the General Assembly of the United Nations

EXCERPT FROM THE OREGONIAN

(See opposite) ☞

THE OREGONIAN, SATURDAY, SEPTEMBER 24, 1966

Yugoslav Writer Sentenced To One Year On Charge Of Spreading False Information

ZADAR, Yugoslavia (AP) — A Yugoslav court Friday sentenced Mihajlo Mihajlov, defiant foe of single-party communism, to 12 months in prison.

The soft-spoken, 32-year-old former university lecturer was convicted of spreading false information.

He had pleaded innocent and told the court Thursday:

"I deeply believe that what I stated in my writings is the truth. I cannot consider socialism a society in which only 6 to 7 per cent have all rights and the others none."

Mihajlov could have been sentenced to two years and five months in prison including a five-month sentence against him which was suspended last year.

A three-judge panel listened to 6½ hours of testimony and argument Thursday, then postponed its verdict for two hours Friday for further consultations.

A crowd of more than 100 persons waited in the corridor in front of the courtroom, a Yugoslav working for an American newsreel company was slapped twice in the face, an Italian TV cameraman was spat on and an Italian newsman was pushed around.

Mihajlov was not in the court to hear his sentence. He had been in the corridor earlier but left after the postponement was announced. His attorney said he did not know why he had not returned.

Guilt Found

Mihajlov entered the courtroom after the judge had finished reading the verdict and sentence, saying no one had summoned him after the recess. He gave immediate notice of appeal and will remain free until that is acted upon.

Despite a warning by the presiding judge against anti-Mihajlov actions persons in the courtroom shouted "Out with him from our city!" "We do not want him!" "Expel him to some foreign country!".

The court found Mihajlov guilty on one count of the indictment, spreading of false information aimed at inciting displeasure and provoking dissatisfaction among the population. For that it sentenced him to nine months. To this the court added the earlier five-month sentence.

MIHAJLO MIHAJLOV

The court decided that of the total of 14 months, Mihajlov was to serve 12 months. But it credited him with the 62 days he spent in jail in April 1965 and last August, which meant that he will actually spend 10 months in jail.

The sentence included a ban against Mihajlov taking part in public activities or publishing for one year. The court also ordered confiscation of 2,000 new dinars ($160), earnings from articles cited in the indictment.

Judge Sime Fabulic, who with two assessors conducted the trial, pronounced Mihajlov innocent on the second count of the indictment — dissemination of banned printed material.

The state prosecutor had charged that Mihajlov wrote and distributed articles containing untruths "to provoke distrust . . . (and) to jeopardize the public order and peace."

Article Banned

He also contended Mihajlov permitted a magazine run by Polish immigrants in Paris to publish his "Moscow Summer 1964," article critical of the Soviet Union. It was banned in Yugoslavia last year.

Mihajlov maintains the Communist Party unjustly monopolizes all aspects of life in Yugoslavia and stifles freedom. He tried unsuccessfully to start an opposition party last month.

He argued that the Yugoslav press and Communist officials have written more strongly than he about conditions in Yugoslavia since the party purge in July.

"When they do it, it is considered to be criticism," he said. "When I do it, it is an offense of the criminal law."

The state prosecutor replied that Mihajlov's demand for a multiparty system was a Trojan horse for the restoration of capitalism.

SUPREME COURT OF THE UNITED STATES

No. 297.—October Term, 1968.

Immigration and Naturalization Service, Petitioner, *v.* Veljko Stanisic.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May 19, 1969.]

Mr. Justice Harlan delivered the opinion of the Court.

This case involves the type of hearing to which an alien crewman is entitled on his claim that he would suffer persecution upon deportation to his native land. The Court of Appeals sustained the respondent crewman's contention that he must be heard by a special inquiry officer [1] in a proceeding conducted under § 242 (b) of the Immigration and Nationality Act.[2] Petitioner, the

[1] A special inquiry officer is "any officer who the Attorney General deems specially qualified to conduct specified classes of proceedings . . . ." Immigration and Nationality Act, § 101 (b) (4), 66 Stat. 171, 8 U. S. C. § 1101 (b) (4). The special inquiry officer has no enforcement duties. He performs "no functions other than the hearing and decision of issues in exclusion and deportation cases, and occasionally in other adjudicative proceedings." 1 C. Gordon & H. Rosenfield, Immigration Law and Procedure § 5.7b, at 5–49 (1967); see generally *id.*, § 5.7.

[2] 66 Stat. 209, 8 U. S. C. § 1252 (b):

"A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and, as authorized by the Attorney General, shall make determinations, including orders of deportation. . . . No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceed-

Immigration and Naturalization service, argues that respondent's claim was properly heard and determined by a district director.[3] We brought the case here, 393 U. S. 912 (1968), to resolve the conflict on this score between the decision below and that of the Court of Appeals for the Second Circuit in *Kordic* v. *Esperdy*, 386 F. 2d 232 (1967).

I.

Respondent, a national of Yugoslavia, was a crewman aboard the Yugoslav vessel, M/V *Sumadija*, when it docked at Coos Bay, Oregon, in late December 1964. He requested and was issued a "D–1" temporary landing permit, in accordance with 8 CFR § 252.1 (d)(1) and § 252 (a)(1) of the Immigration and Nationality Act.[4]

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ings before a special inquiry officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this Act, as the Attorney General shall prescribe. Such regulations shall include requirements that—

"(1) the alien shall be given notice, reasonable under the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

"(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

"(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

"(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

"The procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section."

[3] A district director is the officer in charge of a district office of the Immigration and Naturalization Service. He performs a wide range of functions. See 1 C. Gordon & H. Rosenfield, Immigration Law and Procedure § 1.9c (1967); 8 CFR § 103.1 (f).

[4] Section 252 (a), 66 Stat. 220, 8 U. S. C. § 1282 (a) provides: "No alien crewman shall be permitted to land temporarily in the United States except as provided in this section . . . . If an immigration officer finds upon examination that an alien crewman is a

Under these provisions, the Service may allow a nonimmigrant alien crewman temporary shore leave for

> "the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived." *Ibid.*

On January 6, 1965, while on shore leave, respondent appeared at the Portland, Oregon, office of the Immigration and Naturalization Service. He claimed that he feared persecution upon return to Yugoslavia, and he flatly stated that he would not return to the M/V *Sumadija*. On the basis of the latter statement, and in accordance with § 252 (b) of the Act, the District Director revoked respondent's landing permit. Section 252 (b) provides:

> ". . . [A]ny immigration officer may, in his discretion, if he determines that an alien . . . does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the pro-

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nonimmigrant . . . and is otherwise admissible and has agreed to accept such permit, he may, in his discretion, grant the crewman a conditional landing permit to land temporarily pursuant to regulations prescribed by the Attorney General, subject to revocation in subsequent proceedings as provided in subsection (b), and for a period of time, in any event, not to exceed—

"(1) The period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or

"(2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived."

"D–1" and "D–2" landing permits are permits issued pursuant to 8 CFR §§ 252.1 (d) (1) and 252.1 (d) (2), which implement §§ 252 (a) (1) and 252 (a) (2) of the Act.

> visions of subsection (a)(1), take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States. . . . Nothing in this section shall be construed to require the procedure prescribed in section 242 of this Act to cases falling within the provisions of this subsection [*sic*]."

Section 252 (b) makes no express exception for an alien whose deportation would subject him to persecution. However, § 243 (h) permits the Attorney General to withhold the deportation of any alien to a country in which he would be subject to persecution, and analogously, 8 CFR § 253.1 (e) then provided: [5]

> "Any alien crewman . . . whose conditional landing permit issued under § 252.1 (d)(1) of this chapter is revoked who alleges that he cannot return to a Communist, Communist-dominated, or Communist-occupied country because of fear of persecution in that country on account of race, religion, or political opinion may be paroled into the United States . . . for the period of time and under the conditions set by the district director having jurisdiction over the area where the alien crewman is located."

Thus, although respondent was admittedly deportable under the terms of § 252 (b), he was not immediately returned to his vessel. On January 7, he was offered the

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[5] 26 Fed. Reg. 11797 (December 8, 1961). Effective March 22, 1967, the section was amended and redesignated § 253.1 (f), 32 Fed. Reg. 4341–4342.

opportunity to present evidence to the District Director in support of his claim of persecution.

Respondent presented no evidence to the District Director. Rather, he contended that he had not been given sufficient time to prepare for the hearing, and he also argued that he was entitled to have his claim heard by a special inquiry officer in accordance with the general provisions of § 242 (b). The District Director ruled against respondent and, in the absence of any evidence of probable persecution, ordered him returned to the M/V *Sumadija*, which was then still in port.

Respondent immediately sought relief in the United States District Court for the District of Oregon,[6] which, without opinion, temporarily stayed his deportation and referred the matter back to the District Director for a hearing on the merits of respondent's claim. On January 25, 1965, after a hearing at which respondent was represented by counsel and presented evidence, the District Director held that respondent "has [not] shown that he would be physically persecuted if he were to return to Yugoslavia." Appendix 22.

On respondent's supplemental pleadings, the District Court held that the District Director's findings were supported by the record. The court rejected respondent's claim that he was entitled to a § 242 (b) hearing before a special inquiry officer, relying on the last sentence of § 252 (b), which provides: "Nothing in this section shall be construed to require the procedure prescribed in section 242 of this Act to cases falling within the provisions of this subsection." *Vucinic* v. *INS*, 243 F. Supp. 113 (1965).

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[6] Because the District Director's determination was not pursuant to § 242 (b), the District Court had jurisdiction to review his action. See *Cheng Fan Kwok* v. *INS*, 392 U. S. 206 (1968); *Stanisic* v. *INS*, 393 F. 2d 539, 542 (1968); *Vucinic* v. *INS*, 243 F. Supp. 113, 115–117 (1965); 5 U. S. C. § 1009 (1964).

Respondent did not appeal the District Court's decision. Instead, in July 1965, he petitioned Congress for a private bill, pending action on which the Service stayed his deportation. Respondent's effort proved unsuccessful, and on June 21, 1966, the Service ordered him to appear for deportation to Yugoslavia.

The following day, respondent reasserted his claim of persecution before the Service, and requested that the matter be heard by a special inquiry officer pursuant to § 242. The Service, and subsequently the District Court, denied relief, both holding that this issue had previously been determined adversely to respondent.

The Court of Appeals for the Ninth Circuit reversed, *Stanisic* v. *INS*, 393 F. 2d 539 (1968), holding that the matter was not *res judicata* because of a significant change of circumstances: the District Director's adverse determination in 1965, and the District Court's unappealed approval thereof, were based on the unstated premise that the M/V *Sumadija* was still in port;[7] but now the ship had long since sailed, and respondent still had not been deported. The court held that § 252 (b) only authorized respondent's "summary deportation aboard the vessel on which he arrived or, within a very limited time after that vessel's departure, aboard another vessel pursuant to arrangements made before . . . [his] vessel departed." 393 F. 2d, at 542–543. Since neither of these conditions was met, respondent could no longer be deported pursuant to the District Director's 1965 determination; he was entitled to a *de novo* hearing before a special inquiry officer under § 242 (b) of the Act.

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[7] Actually, the ship sailed from the United States on or about January 16, 1965, or between the date on which the District Director revoked respondent's landing permit (January 6, 1965), and the date on which, after a hearing, he denied respondent's persecution claim (January 25, 1965). This fact was not in the record before the Court of Appeals.

II

At the outset, it is important to recognize the distinction between a determination whether an alien is statutorily deportable—something never contested by respondent—and a determination whether to grant political asylum to an otherwise properly deportable alien.

Section 242 (b) provides a generally applicable procedure "for determining the deportability of an alien . . . ." Section 252 (b) provides a specific procedure for the deportation of alien crewmen holding D–1 landing permits. Neither of these sections is concerned with the granting of asylum.

Relief from persecution, on the other hand, is governed by §§ 212 (d)(5) and 243 (h). The former section authorizes the Attorney General, in his discretion, to

> "parole into the United States under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States . . . ."

The latter authorizes the Attorney General

> "to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion and for such period of time as he deems to be necessary for such reason."

No *statute* prescribes by what delegate of the Attorney General, or pursuant to what procedure, relief shall be granted under these provisions. By *regulation*, the decision to grant parole pursuant to § 212 (d)(5) rests with a district director, 8 CFR §§ 212.5 (a), 253.2; and

by regulation, the decision to withhold deportation of *most* aliens pursuant to § 243 (h) is presently made by a special inquiry officer.[8] 8 CFR §§ 242.8 (a), 242.17 (c).

Prior to 1960, no regulation provided relief to an alien crewman whose D–1 landing permit was revoked but who claimed that return to his country would subject him to persecution. In *Szlajmer* v. *Esperdy*, 188 F. Supp. 491 (1960), a district court held that a crewman in this situation was entitled to be heard. The Service responded by promulgating 8 CFR § 253.1 (e), *supra*, at 4, the regulation which it applied in the case at bar. 8 CFR § 253.1 (e) is a hybrid. The grounds for relief are, for present purposes, identical to those of § 243 (h) of the Act.[9] However, because the Service adheres to the view that a crewman whose D–1 permit has been revoked is not "within the United States" in the technical sense of that phrase, see *Leng May Ma* v. *Barker*, 357 U. S. 185 (1958), it terms the relief "parole" into the United States rather than "withholding deportation." Whatever terminological and conceptual differences may exist, the substance of the relief is the same.[10]

The Service could provide that *all* persecution claims be heard by a district director, and we see no reason why the Service cannot validly provide that the persecution claim of an alien crewman whose D–1 landing permit

[8] This was not always so. Until 1962, the final determination was made by a regional commissioner of the Service. 8 CFR § 243.3 (b) (2) (1958 rev.); see *Foti* v. *INS*, 375 U. S. 217, 230, n. 16 (1963).

[9] The only substantial difference is that the regulation, but not the statute, is limited to Communist-inspired persecution.

[10] For this reason, we have no occasion to decide whether or not respondent was "within the United States." Compare *Szlajmer* v. *Esperdy*, 188 F. Supp. 491 (1960), with *Kordic* v. *Esperdy*, 386 F. 2d 232 (1967), and *Glavic* v. *Beechie*, 225 F. Supp. 24 (1963), aff'd, 240 F. 2d 91 (1965). It may further be noted that § 243 (h), by its terms, "authorizes" but does not require the consideration of persecution claims.

has been revoked be heard by a district director, whether or not the ship has departed. It might be argued, however, that the Service has not done so; that 8 CFR § 253.1 (e) was designed to govern the determination of persecution claims only when § 252 (b) of the Act governed determinations of deportability; and that if departure of the vessel renders § 252 (b) inapplicable (a suggestion we consider and reject in Part III, below), then 8 CFR § 253.1 (e) likewise becomes inapplicable.

8 CFR § 253.1 (e) applies, however, to "any alien crewman . . . whose conditional landing permit issued under § 252.1 (d)(1) [of the Act] . . . is revoked"—precisely respondent's situation—and makes no reference to the departure, *vel non,* of the vessel. Granting that this regulation and its successor provision are not free from ambiguity, we find it dispositive that the agency responsible for promulgating and administering the regulation has interpreted it to apply even when the vessel has departed. *E. g., Kordic* v. *Esperdy,* 386 F. 2d 232 (1967); *Glavic* v. *Beechie,* 225 F. Supp. 24 (1963), aff'd, 240 F. 2d 91 (1965). "The ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation." *Bowles* v. *Seminole Rock Co.,* 325 U. S. 410, 414 (1945).

In sum, it is immaterial to the decision in this case whether § 252 (b)'s exception to the § 242 (b) procedure is, or is not, applicable to respondent. These two provisions govern only the revocation of temporary landing permits and the determination of deportability, and we reiterate that respondent does not contest the District Director's action on either of these scores. These sections do not state who should hear and determine a request for asylum. That is a matter governed by regulation, and under the applicable regulation the respondent received his due.

III.

We do not rest on this ground alone, however. Both the court below and the Court of Appeals for the Second Circuit in *Kordic* v. *Esperdy*, 386 F. 2d 232 (1967), assumed that a crewman's statutory entitlement to a § 242 (b) hearing on his request for asylum was coextensive with his right to a § 242 (b) hearing on his statutory deportability, and the case was argued here primarily on that basis. For the balance of the opinion we thus make, *arguendo*, the same assumption. We conclude, contrary to the court below, that an alien crewman may properly be deported pursuant to § 252 (b) even after his ship has sailed.

A.

Section 242 (b) of the Immigration and Nationality Act provides a generally applicable administrative procedure pursuant to which a special inquiry officer determines whether an alien is deportable. See nn. 1 and 2, *supra*.

The history of § 252 (b)'s narrow exception to the § 242 (b) deportation procedure is found in the Report of the Senate Committee on the Judiciary, S. Rep. No. 1515, 81st Cong., 2d Sess., which preceded the enactment of the Immigration and Nationality Act. Alien crewmen had traditionally been granted the privilege of temporary admission or shore leave "because of the necessity of freeing international commerce and considerations of comity with other nations . . . ." *Id.*, at 546. A serious problem was created, however, by alien crewmen who deserted their ships and secreted themselves in the United States. The Committee found that:

> "[T]he temporary shore leave of alien seamen who remain illegally constitutes one of the most important loopholes in our whole system of restriction

> and control of the entry of aliens into the United States. The efforts to apprehend these alien seamen for deportation are encumbered by many technicalities invoked in behalf of the alien seaman and create many conditions incident to enforcement of the laws which have troubled the authorities for many years." *Id.*, at 550.

To ameliorate this problem, the Committee recommended that:

> "Authority should be granted to immigration officers in a case where the alien crewman intends to depart on the same vessel on which he arrived, upon a satisfactory finding that an alien is not a bona fide crewman, to revoke the permission to land temporarily, to take the alien into custody, and to require the master of the vessel on which he arrived to remove him from the country." *Id.*, at 558.

Unlike § 242 (b), § 252 (b) does not prescribe the procedures governing the determination of the crewman's deportability, nor does it confine that determination to a special inquiry officer.

B.

As the Court of Appeals noted, the § 252 (b) procedure governs a narrow range of cases only. It is entirely inapplicable to persons other than alien crewmen. It does not apply to an alien crewman who enters the United States illegally without obtaining any landing permit at all, or who enters on a "D–2" permit allowing him to depart on a different vessel. See n. 4, *supra*. The Service has held § 252 (b) to be inapplicable even to a crewman issued a D–1 permit unless formal revocation—as distinguished from actual deportation—takes place before his vessel leaves American shores.[11] *Matter of M*,

[11] This is responsive to the language of §252 (b). Permission to land terminates upon the vessel's departure, and thereafter there is nothing to "revoke."

5 I. & N. 127 (1953); 8 CFR § 252.2; see *Cheng Fan Kwok* v. *INS*, 392 U. S. 206, 207 (1968).

Section 252 (b) most plainly governs the situation in which a D–1 landing permit is revoked and the alien crewman is immediately returned to the vessel on which he arrived, which, by hypothesis, is still in a United States port. At the time of revocation, the crewman usually has not traveled far from the port,[12] so the burden of transporting him back to the vessel is small; there is a readily identifiable vessel and place to return him to; and during his brief shore leave, which cannot exceed 29 days, the crewman is unlikely to have established significant personal or business relationships in the United States. In short, the crewman's deportation may be expedited, with minimum hardship and inconvenience to him, to the transportation company responsible for him,[13] and to the Service.

That this is not the only situation to which the § 252 (b) procedure applies, however, is evident from the language of § 252 (b) itself and the related provisions of § 254.[14] Section 252 (b) requires that where an alien crewman's landing permit is revoked his transportation company must detain him aboard the vessel on which he arrived, and deport him. Section 254 (a) imposes a fine on the company and ship's master, *inter alia*,

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[12] 8 CFR § 252.2 (d) provides that a "crewman granted a conditional permit to land under section 252 (a)(1) of this Act . . . is required to depart with his vessel from its port of arrival and from each other port in the United States to which it thereafter proceeds coastwise without touching at a foreign port or place; however, he may rejoin his vessel at another port in the United States before it touches at a foreign port or place if he has advance written permission from the master or agent to do so." In the latter case the crewman may journey some distance from the port at which he arrived.

[13] See *infra*, at 12–13.

[14] 66 Stat. 222, 8 U. S. C. § 1284.

for failure to detain or deport the crewman "if required to do so by an immigration officer." However, § 252 (b)'s requirement is modified by the term, *"if practicable"*; and § 254 (c) correlatively provides:

> "If the Attorney General finds that deportation of an alien crewman . . . on the vessel or aircraft on which he arrived is impracticable or impossible, or would cause undue hardship to such alien crewman, he may cause the alien crewman to be deported from the port of arrival or any other port on another vessel or aircraft of the same transportation line, unless the Attorney General finds this to be impracticable."

These provisions contemplate that an alien crewman whose temporary landing permit is revoked pursuant to § 252 (b) may be deported on a vessel other than the one on which he arrived. The other vessel should preferably be one owned by the transportation company which brought him to the United States,[15] but if this is not feasible, the Attorney General may order him deported by other means, at the company's expense.

The Court of Appeals recognized that an alien crewman might properly be deported on a vessel other than the one which brought him. It noted, however, that § 254 (c) holds the owner of that vessel responsible for all of the expenses of his deportation and further provides that the vessel shall not be granted departure clearance until those expenses are paid or their payment is guaranteed.[16] From this it concluded that "the section

[15] This is doubtless an accommodation made in the light of the transportation company's liability for the expenses of deportation.

[16] "All expenses incurred in connection with such deportation, including expenses incurred in transferring an alien crewman from one place in the United States to another under such conditions and safeguards as the Attorney General shall impose, shall be paid by the owner or owners of the vessel or aircraft on which the alien

contemplates that the alternative arrangement shall be made while the vessel upon which the crewman arrived is still in port . . . ." 393 F. 2d, at 546. Since arrangements for respondent's deportation had not been made before the M/V *Sumadija* departed, the § 254 (c), and hence the § 252 (b), procedures were no longer applicable: with the ship's departure, respondent became entitled to a hearing pursuant to § 242 (b).

We agree that the "clearance" provision of § 254 (c) contemplates that the crewman's departure on another vessel may *sometimes* be accomplished or arranged before the vessel that brought him departs. If, however, the crewman's vessel sails before its owner has paid or guaranteed the expenses of deportation, the owner's liability under § 254 (c) is in no way diminished. The Government has merely lost a useful means of compelling payment of costs which may still be collected by other methods.[17] Indeed, as the Court of Appeals itself noted, § 254 (c)'s financial responsibility provision is not limited to instances of deportation pursuant to § 252 (b), but applies to the deportation of alien crewmen in a variety of situations, including those in which a § 242 (b) proceeding has been held, and thus those in which the crewman's vessel may long since have departed.[18]

Strong policies support the conclusion that a properly commenced § 252 (b) proceeding does not automatically

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arrived in the United States. The vessel or aircraft on which the alien arrived shall not be granted clearance until such expenses have been paid or their payment guaranteed to the satisfaction of the Attorney General. . . ." § 254 (c).

[17] Thus, if and when respondent is deported, the owners of the M/V *Sumadija* will be responsible for the related expenses incurred by the United States.

[18] And, although we do not decide this question, § 254 (c) would appear to allow the Attorney General to require security for the payment of anticipated expenses of deporting an alien crewman, even though no final arrangements have been made before the vessel that brought him departs.

abort upon the departure of the crewman's vessel. If the crewman whose landing permit has been revoked pursuant to § 252 (b) attacks the District Director's action in a federal court, the court would usually stay his deportation pending at least a preliminary hearing. Even courts with dockets less crowded than those of most of our major port cities [19] may not be able to hear the matter for several days or more, during which time the vessel may often have departed according to schedule. It requires little legal talent, moreover, to manufacture a colorable case for a temporary stay out of whole cloth, and to delay proceedings once in the federal courts. The Ninth Circuit's construction would, thus, encourage frivolous applications and intentional delays designed to assure that the crewman's vessel departed before the case was heard. Alternatively, it would so dispose federal judges against granting stays that persons presenting meritorious applications might be deported without the opportunity to be heard.

We agree with the court below that § 252 (b) is a provision of limited applicability. But we conclude that the court's construction would restrict its scope to a degree neither intended by Congress nor supported by the language of the Act, and that it would, as a practical matter, render § 252 (b) useless for the very function it was designed to perform.

We hold that an alien crewman, whose temporary landing permit is properly revoked pursuant to § 252 (b) does not become entitled to a hearing before a special inquiry officer under § 242 (b) merely because his deportation is not finally arranged or effected when his vessel leaves, and that under these circumstances the Attorney General may provide—as he did in 8 CFR § 253.1 (e), now 8 CFR

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[19] See generally Annual Report of the Director of the Administrative Office of the United States Courts, Tables C, D, and X (1968).

§ 253.1 (f)—that the crewman's request for political asylum be heard by a district director of the Immigration and Naturalization Service.

IV.

At the time of respondent's June 1965 hearing before the District Director, § 243 (h) of the Immigration and Nationality Act provided:

> "The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to *physical persecution* . . . ." [20] (Emphasis added.)

By the Act of October 3, 1965, § 11 (f), 79 Stat. 918, this section was amended by substituting for "physical persecution" the phrase "persecution on account of race, religion, or political opinion." Although 8 CFR § 253.1 (e), the regulation under which respondent's 1965 hearing was conducted, did not itself contain any restriction to "physical persecution," it is apparent from the District Director's findings that he read such a limitation into the regulation.[21]

We believe, therefore, that it is appropriate that respondent be given a new hearing before the District Director under the appropriate standard, and we remand the case for that purpose.[22]

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[20] 66 Stat. 214.

[21] See *supra*, at 5; Appendix 18–22 *passim*.

[22] Respondent contends that his 1965 proceeding was infected with various constitutional errors, including the District Director's alleged bias and his combination of prosecutorial, investigative, and adjudicatory functions. Because that proceeding is not before us, and because we remand for a new hearing, we have no occasion to consider these arguments, except to note that neither § 252 (b) of the Immigration and Nationality Act nor 8 CFR § 253.1 (f), under which respondent will be heard on remand, is unconstitutional on its

The judgment of the United States Court of Appeals for the Ninth Circuit is reversed and the case is remanded to that court for further proceedings consistent with this opinion.

It is so ordered.

face. Likewise, it is premature to consider whether, and under what circumstances, an order of deportation might contravene the Protocol and Convention Relating to the Status of Refugees, to which the United States acceded on November 1, 1968. See Department of State Bulletin, Vol. LIX, No. 1535, p. 538.

SUPREME COURT OF THE UNITED STATES

No. 297.—October Term, 1968.

Immigration and Naturalization Service, Petitioner, v. Veljko Stanisic.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May 19, 1969.]

Mr. Justice Black, with whom Mr. Justice Douglas and Mr. Justice Marshall join, dissenting.

Two procedures for the deportation of aliens are relevant in this case. The first is set forth in § 242 (b) of the Immigration and Nationality Act, 66 Stat. 209, 8 U. S. C. § 1252 (b), and is the procedure required in most instances when the Government seeks to deport an alien. Under § 242 (b) a number of procedural safeguards are specified to insure that an alien is given the full benefit of a complete and fair hearing before the harsh consequence of deportation can be imposed on him.[1] The second procedure involved in this case is set

[1] Section 242 (b) provides as follows:

"A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and, as authorized by the Attorney General, shall make determinations, including orders of deportation. . . . No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceedings before a special inquiry officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this Act, as the Attorney General shall prescribe. Such regulations shall include requirements that—

"(1) the alien shall be given notice, reasonable under the circum-

forth in § 252 (b).. It is applicable only under very special circumstances involving alien seamen who enter this country under conditional landing permits. Section 252 (b) provides for a short, summary procedure.[2] Unlike § 242 (b), the first provision mentioned, this second provision does not require that the hearing officer be someone unconnected with the investigation and prosecution of the case. It does not require specific trial safeguards such as the rights to notice, counsel, and cross-examination of witnesses. Indeed, § 252 (b) apparently does not require that the alien be given any hearing at

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stances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

"(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

"(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

"(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

"The procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section."

[2] Section 252 (b) provides as follows:

"Pursuant to regulations prescribed by the Attorney General, any immigration officer may, in his discretion, if he determines that an alien is not a bona fide crewman, or does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a) (1), take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States. Until such alien is so deported, any expenses of his detention shall be borne by such transportation company. Nothing in this section shall be construed to require the procedure prescribed in section 242 of this Act to cases falling within the provisions of this subsection."

all but would seem to authorize an immigration officer to order immediate arrest and summary deportation on the basis of any information coming to him in any way at any time. The question before the Court is therefore not the apparently insignificant question suggested by the Court's opinion—namely, whether this alien's case was properly determined by an official with one title, "District Director," rather than another title, "special inquiry officer." Instead, the question is the crucially significant one whether an alien seaman about to be forced to leave the country is entitled under the circumstances of this case to the benefit of safeguards that were carefully provided by Congress to insure greater fairness and reliability in deportation proceedings.

The regulations relied on by the Court in Part II of its opinion do not provide an independent basis for its holding. Among the relevant regulations, 8 CFR § 242.8 (a) applies "in any proceeding conducted under this part," namely "Part 242—Proceedings to Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal." The regulation is thus designed to spell out further the details of proceedings required to be conducted under § 242 of the statute, and this regulation explicitly authorizes the special inquiry officer "to order temporary withholding of deportation pursuant to § 243 (h) of the Act [the political persecution provision]." In contrast, the regulations relied upon by the Court as authorizing a District Director to decide this issue, in particular former 8 CFR § 253.1 (e), apply by their own terms only to the procedure for "parole" of an alien under § 212 (d)(5), a remedy distinct from the withholding of deportation under § 243 (h), and by the Government's own admission these regulations are applicable only to "requests for asylum made by crewmen against whom proceedings under Section 252 (b) have been instituted." Brief for Petitioner,

p. 37. Thus, the regulations serve only to spell out the procedures to be followed under both § 242 (b) and § 252 (b) and do not even purport to specify when one of these sections rather than the other is in fact applicable. The fact that the Immigration and Naturalization Service has applied the regulation differently does not change this meaning. As the Court concedes, the regulation is "not free from ambiguity," *ante,* p. 9, and of course the ambiguity in the regulation is precisely the same as the ambiguity in the statutory provision from which the wording of the regulation was drawn. It seems clear that the way in which the Service has applied the regulation has been determined by its interpretation of the statute, an interpretation that is in no way binding on us. Both the statute and the regulation are ambiguous, and there is no doubt in my mind that this ambiguity should be resolved in favor of the alien who is seeking a full and fair hearing. With all due respect, I think the Court's involved argument based upon the regulations, which goes beyond anything suggested by the Government itself in this case, provides no basis whatsoever for avoiding the fundamental question of statutory interpretation as to which of the two procedures, § 242 (b) or § 252 (b), was required to be followed in this case.

The Government contends that respondent, the alien seaman involved here, could be properly deported under the special summary procedures of § 252 (b) because his conditional landing permit was revoked and because § 252 (b) authorizes summary deportation after this permit is revoked. Respondent, however, argued in the Court of Appeals that he should have been given the benefit of the careful hearing procedures spelled out by Congress in § 242 (b) because the ship on which he came had departed before the decision of the District Director was made, and therefore the only justification

for the fast but ordinarily less desirable procedure of § 252 (b) no longer existed. The Court of Appeals held that § 252 (b) proceedings were authorized only prior to the departure of the ship. I agree with the Court of Appeals. As that court noted in its opinion:

> "The section [252 (b)] exception [to the general procedural requirements of § 242 (b)] is very narrowly drawn. It does not apply to the deportation of crewmen who have 'jumped ship' and entered the United States illegally, with no permit at all. As noted above, it does not apply to crewmen issued landing permits authorizing them to depart on vessels other than those on which they arrived. It does not apply to crewmen who have overstayed the twenty-nine day leave period without revocation of their landing permits. It does not apply to crewmen who were to leave on the vessel on which they arrived if their vessels have departed before their landing permits were revoked. In all of these situations crewmen may be deported only in accordance with [§ 242 (b)] procedures." 393 F. 2d 539, 544 (C. A. 9th Cir., 1968).

As the legislative history of the Act, quoted in the opinion of the Court of Appeals, shows, the special truncated procedure of § 252 (b) was intended to be used only when the need for speed was truly pressing—when the ship was about to leave port. But the seaman in this case was subjected to this truncated, summary procedure even though his ship had already gone and the need for haste in completing these important legal proceedings no longer existed. There is no reason to suspect that Congress wanted a seaman to be deprived under these circumstances of the vital procedural safeguards so carefully specified in § 242 (b) of the Act.

I would affirm the judgment of the Court of Appeals.